

FACT SHEET

Injustices remain in Alabama's death penalty practices

*By Dev Wakeley, policy analyst
February 20, 2019*

Alabama took an important step toward death penalty reform in 2017, but numerous problems remain. That year, the state finally outlawed judicial override in capital cases. That change means judges no longer can impose the death penalty when a jury recommends life without parole. But the ban was not retroactive, and 35 people who were sentenced that way remain on death row. Remediating that omission is one of several key reforms that would bring Alabama's capital punishment system in line with national standards and federal court rulings.

Americans increasingly oppose the death penalty. Gallup found that opposition to the death penalty more than doubled in the past 25 years. This may result from error rates in the system. For every 10 people executed since 1976, one innocent person on death row has been set free.

Alabama's death penalty scheme has failed to keep up with reforms in the rest of the country. State law has no restriction on execution of people who were under age 18 at the time of the crime. State law also gives insufficient protection against executing people with certain mental disabilities. U.S. Supreme Court precedent is the sole authority preventing executions of minors or of defendants with IQs below 70.

More and more states are abandoning capital punishment. Most recently, Washington's state supreme court barred the death penalty in 2018 because of racial bias and arbitrariness in its administration. By comparison, people convicted of killing a white victim are more than four times more likely to get a death sentence in Alabama than people convicted of killing someone who is not white, the Equal Justice Initiative found in a

2011 report. And Alabama has more people on death row per capita than any other state.

How to reform Alabama's death penalty system

Ending judicial override in future cases was an important first step to fixing a broken system. But other recent changes have aimed to protect that system, not fix it. In 2018, the Legislature authorized a backup execution method, nitrogen hypoxia, in case courts rule lethal injection unconstitutional. This new execution method would kill prisoners through suffocation.

Efforts to protect the state's ability to conduct executions are misguided. Instead of entrenching an unjust system, Alabama could enact numerous reforms to reduce the unfairness of its death penalty practices. Those changes include:

- Apply the ban on judicial override in capital cases retroactively.
- Require unanimous agreement from the jury to sentence people to death.
- Amend state law to bar executions of people who were minors at the time of the crime or who have serious cognitive impairments.
- Impose a moratorium to study and end racially biased death penalty practices.
- Ultimately eliminate capital punishment.

Alabama should implement these steps to reduce and eliminate the unequal, unfair practices in its death penalty scheme. Alabamians deserve a fair, unbiased justice system, and these reforms would be important moves toward a more just state.