

## Alabama's death penalty practices remain unjust and unusually cruel

*By Dev Wakeley, policy analyst | January 2022*

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 disturbingly high error rates in the system. [For every 10 people executed since 1976, one innocent person on death row has been set free.](#)

Alabama took an important step toward death penalty reform in 2017, but the state's death penalty scheme remains broken. 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. Fixing that failure is one of several key reforms that would bring Alabama's capital punishment system in line with national standards and federal court rulings.

### Alabama's death penalty practices are behind the times

Alabama's death penalty scheme has failed to keep up with reforms in the rest of the United States. Under state law, prosecutors do not have to prove a defendant was at least 18 years old when the crime occurred. State law also lacks protections against executing people with mental disabilities. U.S. Supreme Court precedent is the sole authority preventing executions of defendants with IQs below 70.

An increasing number of states are abandoning capital punishment. Most recently, Virginia became the first Southern state to do so when Gov. Ralph Northam [signed an abolition bill](#) in March 2021. In all, 26 states either have abolished the death penalty or have seen their governor impose a moratorium, [according to the Death Penalty Information Center](#).

Racial disparities abound in our state's capital punishment system. In Alabama, people convicted of killing a white person are more than four times more likely to get a death sentence than people convicted of killing someone who is not white, [the Equal Justice Initiative found in 2011](#). And Alabama has [more people on death row per capita than any other death penalty state](#).

# How to reform Alabama's capital punishment system

Ending judicial override in future cases was an important first step toward fixing Alabama's broken death penalty system. But other recent changes have aimed to enshrine that system instead. In 2018, the Legislature authorized a backup execution method, nitrogen hypoxia, in case courts outlaw lethal injection. This new procedure [would kill people through suffocation](#), and it has never been used on a human before.

Efforts to prop up the state's broken death penalty system are misguided. Alabama can and should enact numerous reforms to reduce the unfairness of its death penalty practices. Those changes include:

- Make the 2017 judicial override ban retroactive.
- Require unanimous agreement from the jury to sentence people to death.
- Amend state law to require prosecutors to prove a defendant was 18 or older at the time of the crime.
- Amend state law to forbid executions of people who have serious cognitive impairments.
- Impose a moratorium to study and end racially biased death penalty practices.
- Provide state funding for appeals of death sentences, as all other states with capital punishment do.
- Ultimately eliminate capital punishment.

## Bottom line

Alabama should reduce and eliminate the unequal, unfair practices present in the state's death penalty scheme – and ultimately should end capital punishment entirely. Alabamians deserve a fair, unbiased justice system, and these death penalty reforms would be steps toward a more just state.