

A Broken System:

Error Rates in Capital Cases, 1973-1995

APPENDICES

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Table of Appendices

Appendix A: State Capital Punishment Report Cards

Description of Information in State Capital Punishment Report Cards	A-1
National Composite Capital Punishment Report Card	A-5
Table 30: State-by-State Comparisons of Direct Appeal, State Post-Conviction, and Federal Habeas Corpus Reversal Rates and Overall Error Rates	A-7
Alabama Capital Punishment Report Card	A-9
Arizona Capital Punishment Report Card	A-11
Arkansas Capital Punishment Report Card	A-13
California Capital Punishment Report Card	A-15
Delaware Capital Punishment Report Card	A-17
Florida Capital Punishment Report Card	A-19
Georgia Capital Punishment Report Card	A-21
Idaho Capital Punishment Report Card	A-23
Illinois Capital Punishment Report Card	A-25
Indiana Capital Punishment Report Card	A-27
Kentucky Capital Punishment Report Card	A-29
Louisiana Capital Punishment Report Card	A-31
Maryland Capital Punishment Report Card	A-33
Mississippi Capital Punishment Report Card	A-35
Missouri Capital Punishment Report Card	A-37
Montana Capital Punishment Report Card	A-39
Nebraska Capital Punishment Report Card	A-41
Nevada Capital Punishment Report Card	A-43
North Carolina Capital Punishment Report Card	A-45
Oklahoma Capital Punishment Report Card	A-47
Pennsylvania Capital Punishment Report Card	A-49
South Carolina Capital Punishment Report Card	A-51
Tennessee Capital Punishment Report Card	A-53
Texas Capital Punishment Report Card	A-55
Utah Capital Punishment Report Card	A-57
Virginia Capital Punishment Report Card	A-59
Washington Capital Punishment Report Card	A-61
Wyoming Capital Punishment Report Card	A-63

Appendix B: Federal Circuit Court and Regional Capital Punishment Report Cards

Description of Information in Circuit and Regional
Capital Punishment Report Cards B-1

Third Circuit B-4

Fourth Circuit B-6

Fifth Circuit B-8

Sixth Circuit B-10

Seventh Circuit B-12

Eighth Circuit B-14

Ninth Circuit B-16

Tenth Circuit B-18

Eleventh Circuit B-20

**Appendix C: Incomplete List of Capital Judgments Reversed
on State Post-Conviction or Related Types of Review**

Introduction and Key C-1

Summary of National Composite Results C-3

Alabama C-4

Arizona C-6

Arkansas C-8

California C-9

Delaware C-10

Florida C-11

Georgia C-17

Idaho C-20

Illinois C-21

Indiana C-24

Kentucky C-26

Louisiana C-27

Maryland C-28

Mississippi C-30

Missouri C-31

Montana C-32

Nebraska C-33

Nevada C-34

Appendix C, cont'd

North Carolina C-35
Oklahoma C-37
Pennsylvania C-38
South Carolina C-39
Tennessee C-41
Texas C-44
Utah C-47
Virginia C-48
Washington C-49
Wyoming C-50

**Appendix D: Examples of Serious Error Warranting
Federal Habeas Corpus Relief**

Appendix E: Tables and Figures

Table 1: Overall Error Rates and Percent Death Sentences
Carried Out, by State, 1973-1995 E-2

Table 2: Death Row Population, Executions, and Percent
Executed, 1973-1999 E-3

Table 3: State and Federal Reversals by Year, 1973-1995..... E-4

Table 9: Overall Error Rates, by State, 1973-1995 *Excluding*
State Post-Conviction E-5

Figure 11: Combined Error Rates on State Direct Appeal and
Federal Habeas, 1973-95 E-6

Table 11: Years from First Death Sentence to First Non-
Consensual Execution, 1973-2000 E-7

Table 12: Average Years from Death Sentence to Execution,
1973-95 E-8

Table 13: Proportion of 1973-1995 Death Sentences Awaiting

State Direct Review as of 1995E-9

Appendix E, cont'd

Table 14:	Death Sentences Per 1,000 Homicides, 1973-1995	E-10
Table 15:	Death Sentences Per 100,000 Population, 1973-1995	E-11
Table 16:	Death Sentences Per 1,000 Prison Population, 1973-1995	E-12
Table 17:	Non-Consensual Executions Per 1,000 Homicides, 1973-1995	E-13
Table 18:	Non-Consensual Executions Per 100,000 Population, 1973-1995	E-14
Table 19:	Non-Consensual Executions Per 1,000 Prison Population, 1973-1995	E-15
Table 20:	Average Homicides Per 100,000 Population, 1973-1995	E-16
Table 21:	Average Percent of Population that is Non-White, 1973-1995	E-17
Table 22:	Index of Political Pressure on State Courts	E-18
Table 23:	State Expenditures Per Capita on Courts, 1973-95	E-19
Table 24:	State Court Criminal Cases Per 1,000 Population, 1973-95	E-29
Table 26:	Death Sentences Per 100,000 Population by Region, 1973-1995	E-21
Table 27:	Non-Consensual Executions Per 100,000 Population by Region, 1973-1995	E-21
Table 28:	Percent of Death Sentences Carried Out (All Executions), 1973-1995	E-22
Table 29:	Percent of Death Sentences Carried Out (Non- Consensual Executions), 1973-1995	E-23

Figure 36: Percent Death Sentences Carried Out (Non-Consensual Executions), 1973-95E-24

Appendix A: State Capital Punishment Report Cards

This Appendix contains two-page capital punishment report cards on all 28 capital-sentencing states that reviewed at least one death sentence on direct appeal and federal habeas corpus during the 1973-1995 study period. For comparison purposes, this collection of report cards begins with the national composite capital punishment report card (discussed in the main Report (hereinafter, “*Report*”) pp. 28-45) and then Table 30, which compares the rates of capital-sentencing error that were discovered for each state on state direct appeal, state post-conviction review, and federal habeas corpus, and the total error and success rates for each state. (For a description of how those rates are calculated, *see Report*, pp. 4-5 & notes 39, 40).

Description of Information in State Capital Punishment Report Cards

The state capital punishment report cards collected in this Appendix contain seven categories of information:

1. Capital-sentencing history.

In the “History” section has information about the years in which four important capital-sentencing events occurred in each state following the Supreme Court’s invalidation of all preexisting capital statutes and sentences in *Furman v. Georgia*¹—the state’s first death sentence, first direct appeal, first consensual execution and first non-consensual execution.²

2. Sentences and executions.

This section of each state capital punishment report card provides information about how many

¹*See Report*, p.3.

² On the difference between consensual and non-consensual executions, *see Report*, note 31; pp. 32 & note 140, 41; note 208.

death sentences were imposed in each state and how many, and what proportion, of those death sentences were carried out, during the study period.

3. Error and success rates.

The third section of the report cards identifies for each state (a) the rates of serious error discovered at each level of judicial inspection,³ (b) the overall error rate, meaning the proportion of capital judgments undergoing judicial inspection that were thrown out before reaching the end of the inspection process,⁴ and, conversely, (c) the overall success rate, meaning the proportion of capital judgments found after a full complement of inspections to be *free* of serious error.

4. Length of time of review.

This section reports information for each state on (a) the number of years that elapsed between the state's first death sentence and its first non-consensual execution (not necessarily in the same case); (b) the average number of years it took death sentences to proceed through the three-stage inspection process to execution in the small proportion of cases in which an execution took place, and (c) the average time from death sentence to federal habeas corpus reversal in the minority of cases in which reversal occurred at the third (federal habeas corpus) checkpoint, as opposed to taking place at one of the first two (state court) checkpoints.

³There are three levels of judicial inspection—state direct appeal, state post-conviction and federal habeas corpus. *See Report*, Part V, pp.18-22.

⁴*See Report*, pp. 4-5 & notes 39, 40.

5. Capital-sentencing and execution rates.

This part of each report card answers two questions. First, how often did the state impose death sentences? To answer this question, we consider death sentences per 1,000 homicides, per 100,000 population, and per 1,000 incarcerated inmates in the jurisdiction. Second, how often (relative to homicides, population and prison population) did the state execute offenders? Because we are interested in success and error rates, we consider here only “non-consensual” executions, *i.e.*, ones that were subjected to full review and found to be free of serious error.

6. Demographic information.

The demographic information reported in this sixth report card category reveals the population pools against which each state’s number of death sentences and executions are compared to determine the sentencing and execution rates. This part of the report card also provides bases for distinguishing among states—and thus, potentially, for explaining variations among states—in terms of the capital-sentence error rates detected on direct appeal and habeas corpus inspection.

“Average population” is the state’s yearly average population from 1973-1995.

“Average homicides” are the total number of homicides in each state from 1973-1995 divided by 23, the number of years in our study .

Homicides per population establishes a state’s homicide rate. By “average homicides/average population,” we mean the average number of homicides per year during the study period for every 100,000 persons in the jurisdiction, averaged over the state’s population during the study period.

“Average prison admissions” means the average number of persons admitted each year to the state’s prisons during the study period.

“Average prison population” means the jurisdiction’s average population over study period.

We also report here the percentage of each state’s population that was nonwhite during the study period.

7. Court factors: the context of state court decision making.

In the state capital punishment report cards, we report four pieces of information about state courts and judges that may help explain state variations in capital-sentencing success/error rates, capital-sentencing rates themselves and execution rates. These figures are most informative when used for comparative purposes.

The “political pressure” index measures the extent to which state judges are subject to electoral scrutiny and discipline. Although nearly all the state judges in our study are subject to voter scrutiny at some point if they wish to remain in office, the forms and frequency of elections differ in ways that are likely to increase or decrease the extent to which judges are politically at risk as a result of capital outcomes produced in their courts (meaning, at the trial level, whether the verdict was death or life and, at the appellate level, whether a death sentence under review was affirmed or reversed). More specifically, our index considers whether judges initially are elected or appointed, whether judicial elections are partisan, the length of judges’ terms of office, and whether judges’ continuation in office is determined by contested or retention elections. (*See Report*, notes 54, 221)

The “party competition index” is a composite of the vote share of each party in state gubernatorial and legislative elections from 1968-1996.

Our penultimate (“state court criminal caseload”) category reports the yearly average number of criminal case filings in each jurisdiction from 1985-1994 per 1,000 people in the population.

Finally, we report each state’s average annual court-related expenditures during the fiscal years 1982-1992.

National Composite Capital Punishment Report Card

History (34 States)

First Death Sentence	1973
First Direct Appeal	1973
First Consensual Execution	1977
First Non-Consensual Execution	1979

Sentences and Executions (34 States)

Total Number of Death Sentences	5,760
Total Number of Executions	313
Percentage of Death Sentences Carried Out	5%

Error Rates

State Direct Appeal (34 States)

Number Reviewed on Direct Appeal	4,578
Number Reversed on Direct Appeal	1,885
Percentage Reversed on Direct Appeal	41%
Number Awaiting Direct Appeal	1,182
Percentage Awaiting Direct Appeal	21%
Number Forward to State Post-Conviction	2,693

State Direct Appeal (28 States)

Number Reviewed on Direct Appeal	4,364
Number Reversed on Direct Appeal	1,782
Percentage Reversed on Direct Appeal	41%
Number Forward to State Post-Conviction	2582

State Post-Conviction (28 States)

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	≥248
Percentage Reversed on Post-Conviction	≥10%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined (28 States)

Overall Rate of Error Found by State Courts	$\geq 47\%$
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Error Rates (Continued)

Federal Habeas Corpus (28 States)

Number Reviewed on Habeas	599
Number Reversed on Habeas	237
Percentage Reversed on Habeas	40%

Overall Rates Including [and Excluding] State Post-Conviction (28 States)

Overall Error Rate	68% [64%]
Overall Success Rate	32% [36%]

Time (28 States)

Time From First Death Sentence to First Non-Consensual Execution	6
Average Time from Sentence to Execution	9
Average Time from Sentence to Final Federal Relief	7.6

Sentencing and Execution Rates (34 States)

	Death States	Whole Nation
Death Sentences per 1000 homicides	14.90	12
Death Sentences per 100,000 pop.	3.9	2.46
NC Executions per 1000 homicides	.68	.54

Demographic Information (34 States)

	States	Whole Nation	Death
Average Population	181,374,347	237,905,964	
Average Homicides	16,860	21,197	
Average Homicides Rate per 100,000 Population	9.3	9	
Percentage Population Non-White	19%	20%	

Sources: DRcen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen

**Table 30: State-by-State Comparisons of Direct Appeal,
State Post-Conviction, and Federal Habeas Corpus
Reversal Rates and Overall Error Rates**

State	% Reversed on State Direct Appeal	% Reversed on State Post-Conviction*	% Reversed in State Courts, Overall*	Percent Reversed on Federal Habeas Corpus	Overall Error Rate, Excluding State PC	Overall Error Rate, Including State PC*
Alabama	55	9	59	45	75	77
Arizona	42	10	47	60	77	79
Arkansas	40	4	43	48	69	70
California	31	3	33	80	86	87
Delaware	26	unknown	unknown	0	26	unknown
Florida	49	17	58	37	68	73
Georgia	35	12	43	65	77	80
Idaho	42	5	44	67	81	82
Illinois	39	7	43	40	63	66
Indiana	32	25	49	50	66	75
Kentucky	50	0	50	100	100	100
Louisiana	46	7	50	27	61	64
Maryland	53	52	77	100	100	100
Mississippi	61	20	69	71	89	91
Missouri	17	4	20	15	29	32
Montana	42	9	47	75	86	87
Nebraska	29	13	38	43	60	65
Nevada	30	8	35	50	65	68
No. Carolina	61	10	65	18	68	71
Oklahoma	48	2	50	50	74	75
Pennsylvania	28	1	29	40	57	57
So. Carolina	54	18	62	14	60	67
Tennessee	29	12	38	100	100	100
Texas	31	6	35	26	49	52
Utah	35	23	50	33	56	67
Virginia	10	3	13	6	15	18
Washington	45	unknown	unknown	33	63	unknown
Wyoming	67	33	78	50	84	89

* Because state post-conviction data are incomplete, the figures in these columns are in most cases lower than the actual figure. *See Report*, note 39; pp. 26-27, 33-34; *infra Appendix C*, pp. C-1 to C-2.

Sources: DADB, DRCen, Appendix C, HCDB

State Report Cards

Alabama, 1975-1995

History

First Death Sentence	1975
First Direct Appeal	1977
First Consensual Execution	NONE
First Non-Consensual Execution	1983

Sentences and Executions

Total Number of Death Sentences	308
Total Number of Executions	12
Percentage of Death Sentences Carried Out	4%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	264
Number Reversed on Direct Appeal	145
Percentage Reversed on Direct Appeal	55%
Number Awaiting Direct Appeal	44
Percentage Awaiting Direct Appeal	14%
Number Forward to State Post-Conviction	119

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	≥11
Percentage Reversed on Post-Conviction	≥9%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	≥59%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	22
Number Reversed on Habeas Corpus	10
Percentage Reversed on Habeas Corpus	45%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	77% [75%]
Overall Success Rate	23% [25%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	8.00
Average Time from Sentence to Execution	9.44
Average Time from Sentence to Final Federal Relief	8.50

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	28.93
Death Sentences per 100,000 Population	7.75
Death Sentences per 1000 Prison Population	27.31
Non-Consensual Executions per 1000 Homicides	1.13
Non-Consensual Executions per 100,000 Population	0.30
Non-Consensual Executions per 1000 Prison Population	1.06

Demographic Information

Average Population	3,938,785
Average Homicides	463
Average Homicides/Average Population	11.75
Average Prison Admissions	4,023
Average Prison Population	11,278
Percentage Population Non-White	27%

Court Factors

Political Pressure (judicial elections)	8
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	30.56
Expenditures per Capita on Courts	30.64

Sources: DRcen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Arizona, 1974-1995

History

First Death Sentence	1974
First Direct Appeal	1975
First Consensual Execution	1993
First Non-Consensual Execution	1992

Sentences and Executions

Total Number of Death Sentences	247
Total Number of Executions	4
Percentage of Death Sentences Carried Out	2%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	197
Number Reversed on Direct Appeal	82
Percentage Reversed on Direct Appeal	42%
Number Awaiting Direct Appeal	50
Percentage Awaiting Direct Appeal	20%
Number Forward to State Post-Conviction	115

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	≥12
Percentage Reversed on Post-Conviction	≥10%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	≥48%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	15
Number Reversed on Habeas Corpus	9
Percentage Reversed on Habeas Corpus	60%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	79% [77%]
Overall Success Rate	21% [23%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	18.00
Average Time from Sentence to Execution	16.00
Average Time from Sentence to Final Federal Relief	9.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	40.98
Death Sentences per 100,000 Population	7.82
Death Sentences per 1000 Prison Population	25.29
Non-Consensual Executions per 1000 Homicides	0.50
Non-Consensual Executions per 100,000 Population	0.09
Non-Consensual Executions per 1000 Prison Population	0.31

Demographic Information

Average Population	3,068,591
Average Homicides	262
Average Homicides/ Average Population	8.54
Average Prison Admissions	3,540
Average Prison Population	9,769
Percentage Population Non-White	17%

Court Factors

Political Pressure (judicial elections)	7
Party Competition (gubernatorial elections)	1
State Court Criminal Caseload per 1000 Population	36.69
Expenditures per Capita on Courts	57.76

Sources: DRcen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Arkansas, 1974-1995

History

First Death Sentence	1974
First Direct Appeal	1975
First Consensual Execution	1990
First Non-Consensual Execution	1990

Sentences and Executions

Total Number of Death Sentences	89
Total Number of Executions	11
Percentage of Death Sentences Carried Out	12%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	82
Number Reversed on Direct Appeal	33
Percentage Reversed on Direct Appeal	40%
Number Awaiting Direct Appeal	7
Percentage Awaiting Direct Appeal	8%
Number Forward to State Post-Conviction	49

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	≥2
Percentage Reversed on Post-Conviction	≥4%
Number Forward to Federal Habeas Corpus	Unknown

Overall Rate of Error Found by State Courts

Overall Rate of Error Found by State Courts	≥43%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	25
Number Reversed on Habeas Corpus	12
Percentage Reversed on Habeas Corpus	48%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	70% [69%]
Overall Success Rate	30% [31%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	16.00
Average Time from Sentence to Execution	10.00
Average Time from Sentence to Final Federal Relief	14.33

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	18.09
Death Sentences per 100,000 Population	3.84
Death Sentences per 1000 Prison Population	17.21
Non-Consensual Executions per 1000 Homicides	2.03
Non-Consensual Executions per 100,000 Population	0.43
Non-Consensual Executions per 1000 Prison Population	1.93

Demographic Information

Average Population	2,296,077
Average Homicides	214
Average Homicides/ Average Population	9.32
Average Prison Admissions	2,157
Average Prison Population	5,173
Percentage Population Non-White	18%

Court Factors

Political Pressure (judicial elections)	7
Party Competition (gubernatorial elections)	0
State Court Criminal Caseload per 1000 Population	41.70
Expenditures per Capita on Courts	19.13

Sources: DRcen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

California, 1976-1995

History

First Death Sentence	1976
First Direct Appeal	1979
First Consensual Execution	1993
First Non-Consensual Execution	1992

Sentences and Executions

Total Number of Death Sentences	531
Total Number of Executions	2
Percentage of Death Sentences Carried Out	0.4%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	281
Number Reversed on Direct Appeal	87
Percentage Reversed on Direct Appeal	31%
Number Awaiting Direct Appeal	250
Percentage Awaiting Direct Appeal	47%
Number Forward to State Post-Conviction	194

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	≥7
Percentage Reversed on Post-Conviction	≥4%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	≥33%
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	5
Number Reversed on Habeas Corpus	4
Percentage Reversed on Habeas Corpus	80%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate	87% [86%]
Overall Success Rate	13% [14%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	16.00
Average Time from Sentence to Execution	9.00
Average Time from Sentence to Final Federal Relief	12.50

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	7.75
Death Sentences per 100,000 Population	2.00
Death Sentences per 1000 Prison Population	8.59
Non-Consensual Executions per 1000 Homicides	0.01
Non-Consensual Executions per 100,000 Population	0.00
Non-Consensual Executions per 1000 Prison Population	0.02

Demographic Information

Average Population	25,990,813
Average Homicides	2,980
Average Homicides/ Average Population	11.46
Average Prison Admissions	22,864
Average Prison Population	61,818
Percentage Population Non-White	25%

Court Factors

Political Pressure (judicial elections)	5
Party Competition (gubernatorial elections)	1
State Court Criminal Caseload per 1000 Population	15.43
Expenditures per Capita on Courts	67.85

Sources: DRCen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen

Delaware, 1978-1995

History

First Death Sentence	1978
First Direct Appeal	1981
First Consensual Execution	1992
First Non-Consensual Execution	1993

Sentences and Executions

Total Number of Death Sentences	24
Total Number of Executions	5
Percentage of Death Sentences Carried Out	21%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	23
Number Reversed on Direct Appeal	6
Percentage Reversed on Direct Appeal	26%
Number Awaiting Direct Appeal	1
Percentage Awaiting Direct Appeal	4%
Number Forward to State Post-Conviction	17

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	Unknown
Percentage Reversed on Post-Conviction	Unknown
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	Unknown
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Federal Habeas Corpus

Number Reviewed on Habeas Corpus	2
Number Reversed on Habeas Corpus	0
Percentage Reversed on Habeas Corpus	0%

Overall Rates [Excluding State Post-Conviction]

Overall Error Rate	[26%]
Overall Success Rate	[74%]

Timing

Time From First Death Sentence to First Non-Consensual Execution	15.00
Average Time from Sentence to Execution	7.00
Average Time from Sentence to Final Federal Relief	NA

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	32.48
Death Sentences per 100,000 Population	3.79
Death Sentences per 1000 Prison Population	9.32
Non-Consensual Executions per 1000 Homicides	2.71
Non-Consensual Executions per 100,000 Population	0.32
Non-Consensual Executions per 1000 Prison Population	0.78

Demographic Information

Average Population	638,374
Average Homicides	35
Average Homicides/ Average Population	5.52
Average Prison Admissions	617
Average Prison Population	2,576
Percentage Population Non-White	20%

Court Factors

Political Pressure (judicial elections)	3
Party Competition (gubernatorial elections)	2
State Court Criminal Caseload per 1000 Population	32.89
Expenditures per Capita on Courts	58.37

Sources: DRcen; Death Row U.S.A., Winter 2000; DADB; HCDB; Appendix C; USCen; UCRDB; USCen; PrisCen; PolPres; CtCaLd; CtExpen