

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

This Appendix contains report cards for the nine federal judicial circuits that conducted federal habeas corpus review of state death sentences during the 1973-1995 study period. Most of the information on the report cards serves merely as a regional composite of information generated by state courts or other state actors in the subset of particular states (noted in the title of each report) that are grouped in the circuit. Only the three items—all falling within the “Federal Habeas Corpus” section of each report, and all marked with a number sign (#)—reflect actions exclusively by the federal courts in the relevant circuit. An additional six rows of information (marked with a plus sign (+)) report on a mixture of actions by the relevant state courts *and* the federal courts in the circuit.

The federal circuit court report cards collected here 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 the multi-state region 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 reports aggregate information about how many death sentences were imposed in the states in the region and how many and what proportion of those death sentences were carried out, during the study period.

3. Error and success rates.

¹See *Report*, p.3.

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

The third section of the report cards identifies, as a composite for the states within the region, (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 category of the report card aggregates information for the states within the region on (a) 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 (b) 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.

5. Capital-sentencing and execution rates.

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.

This part of each regional capital punishment report card answers two questions. First, how often did the states within the region, in the aggregate, 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 states within the region, in the aggregate, execute offenders? Because we are interested in success and error rates, we consider here only “non-consensual” executions, *i.e.*, ones that were fully reviewed and found free of serious error.⁵

6. Demographic information.

The demographic information reported in the sixth report card category reveals the population pools against which each region’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 regions—and thus, potentially, for explaining variations among regions—in terms of the capital-sentence error rates detected on direct appeal and habeas corpus inspection.

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

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

Homicides per population establishes a region’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 region’s population during the study period.

“Average prison admissions” means the average number of persons admitted each year to the region’s

⁵See Report, note 31; pp.32 & n.140, 41; note 208.

prisons during the study period.

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

We also report here the percentage of each region’s population that is nonwhite.

**The Third Circuit
(Delaware, Pennsylvania New Jersey Region)**

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	343
Total Number of Executions	7
Percentage of Death Sentences Carried Out	2%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	261
Number Reversed on Direct Appeal	95
Percentage Reversed on Direct Appeal	36%
Number Awaiting Direct Appeal	82
Percentage Awaiting Direct Appeal	24%
Number Forward to State Post-Conviction	166

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

Federal Habeas Corpus

Number Reviewed on Habeas#	7
Number Reversed on Habeas#	2
Percentage Reversed on Habeas#	29%

Overall Rates [Excluding State Post-Conviction]

Overall Error Rate+	[55%]
Overall Success Rate+	[45%]

Time

Average Time from Sentence to Execution#	8.80
Average Time from Sentence to Final Federal Relief#	9.00

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	12.64
Death Sentences per 100,000 Population	1.70
Death Sentences per 1000 Prison Population	18.78
NC Executions per 1000 Homicides	0.07
NC Executions per 100,000 Population	0.01
NC Executions per 1000 Prison Population	0.11

Demographic Information

Average Population	20,134,374
Average Homicides	1,180
Average Homicides Rate per 100,000 Population	5.86
Percentage Population Non-White	14%

NOTES:

1. Data marked with a # reports the results of actions exclusively of the federal courts within the circuit.
2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.
4. Because no state post-conviction information was collected or available for Delaware and New Jersey, information on that stage of the review process is omitted.
5. No New Jersey cases were reviewed on federal habeas corpus during the study period.

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

**The Fourth Circuit
(Maryland, North Carolina, South Carolina, Virginia Region)**

History

First Death Sentence	1979
First Direct Appeal	1980
First Consensual Execution	1982
First Non-Consensual Execution	1984

Sentences and Executions

Total Number of Death Sentences	574
Total Number of Executions	43
Percentage of Death Sentences Carried Out	8%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	494
Number Reversed on Direct Appeal	236
Percentage Reversed on Direct Appeal	48%
Number Awaiting Direct Appeal	80
Percentage Awaiting Direct Appeal	14%
Number Forward to State Post-Conviction	258

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	≥36
Percentage Reversed on Post-Conviction	≥14%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	≥55%
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Federal Habeas Corpus

Number Reviewed on Habeas#	52
Number Reversed on Habeas#	8
Percentage Reversed on Habeas#	15%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	62% [56%]
Overall Success Rate+	38% [44%]

Time

Average Time from Sentence to Execution+	7.91
Average Time from Sentence to Final Federal Relief+	8.04

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	13.10
Death Sentences per 100,000 Population	2.89
Death Sentences per 1000 Prison Population	10.14
NC Executions per 1000 Homicides	0.87
NC Executions per 100,000 Population	0.19
NC Executions per 1000 Prison Population	0.67

Demographic Information

Average Population	19,832,227
Average Homicides	1,905
Average Homicides Rate per 100,000 Population	9.61
Average Prison Population	56,630
Percentage Population Non-White	25%

NOTES:

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3. All other information is aggregate data for the states within the region.

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

**The Fifth Circuit
(Louisiana, Mississippi, Texas Region)**

History

First Death Sentence	1977
First Direct Appeal	1978
First Consensual Execution	1985
First Non-Consensual Execution	1983

Sentences and Executions

Total Number of Death Sentences	1013
Total Number of Executions	130
Percentage of Death Sentences Carried Out	13%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	772
Number Reversed on Direct Appeal	295
Percentage Reversed on Direct Appeal	38%
Number Awaiting Direct Appeal	241
Percentage Awaiting Direct Appeal	24%
Number Forward to State Post-Conviction	477

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
	≥37
Number Reversed on Post-Conviction	
Percentage Reversed on Post-Conviction	≥8%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

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

Number Reviewed on Habeas#	200
Number Reversed on Habeas#	63

Percentage Reversed on Habeas#	32%
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Overall Success Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	61% [58%]
Overall Success Rate+	39% [42%]

Time

Average Time from Sentence to Execution+	8.28
Average Time from Sentence to Final Federal Relief+	7.05

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	14.64
Death Sentences per 100,000 Population	4.51
Death Sentences per 1000 Prison Population	15.09
NC Executions per 1000 Homicides	1.72
NC Executions per 100,000 Population	0.53
NC Executions per 1000 Prison Population	1.77

Demographic Information

Average Population	22,473,577
Average Homicides	3,009
Average Homicides Rate per 100,000 Population	13.39
Average Prison Population	67,151
Percentage Population Non-White	27%

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

**The Sixth Circuit
(Kentucky, Ohio, Tennessee Region)**

History

First Death Sentence	1978
First Direct Appeal	1980
First Consensual Execution	N/A
First Non-Consensual Execution	N/A

Sentences and Executions

Total Number of Death Sentences	391
Total Number of Executions	0
Percentage of Death Sentences Carried Out	0%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	284
Number Reversed on Direct Appeal	87
Percentage Reversed on Direct Appeal	31%
Number Awaiting Direct Appeal	107
Percentage Awaiting Direct Appeal	27%
Number Forward to State Post-Conviction	197

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

Federal Habeas Corpus

Number Reviewed on Habeas#	2
Number Reversed on Habeas#	2

Percentage Reversed on Habeas#	100%
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Overall Rates [Excluding State Post-Conviction]

Overall Error Rate+	[100%]
Overall Success Rate+	[0%]

Time

Average Time from Sentence to Execution+	N/A
Average Time from Sentence to Final Federal Relief+	13

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	11.46
Death Sentences per 100,000 Population	2.03
NC Executions per 1000 Homicides	0.00
NC Executions per 100,000 Population	0.00
NC Executions per 1000 Prison Population	0.00

Demographic Information

Average Population	19,255,663
Average Homicides	1,484
Average Homicides Rate per 100,000 Population	7.71
Percentage Population Non-White	12%

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3. All other information is aggregate data for the states within the region.
4. Because no state post-conviction information was collected or available for Kentucky and Ohio, information on that stage of the review process is omitted.
5. No Ohio cases were review on federal habeas corpus during the study period.

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

**The Seventh Circuit
(Illinois, Indiana Region)**

History

First Death Sentence	1977
First Direct Appeal	1980
First Consensual Execution	1981
First Non-Consensual Execution	1994

Sentences and Executions

Total Number of Death Sentences	352
Total Number of Executions	10
Percentage of Death Sentences Carried Out	3%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	297
Number Reversed on Direct Appeal	110
Percentage Reversed on Direct Appeal	37%
Number Awaiting Direct Appeal	55
Percentage Awaiting Direct Appeal	16%
Number Forward to State Post-Conviction	187

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	≥22
Percentage Reversed on Post-Conviction	≥12%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	≥44%
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Federal Habeas Corpus

Number Reviewed on Habeas#	14
Number Reversed on Habeas#	6

Percentage Reversed on Habeas#	43%
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Overall Rates Including [and Excluding] State Post-Conviction

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

Time

Average Time from Sentence to Execution+	10.90
Average Time from Sentence to Final Federal Relief+	10.92

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	9.95
Death Sentences per 100,000 Population	2.07
Death Sentences per 1000 Prison Population	11.74
NC Executions per 1000 Homicides	0.20
NC Executions per 100,000 Population	0.04
NC Executions per 1000 Prison Population	0.23

Demographic Information

Average Population	16,991,933
Average Homicides	1,538
Average Homicides Rate per 100,000 Population	9.05
Average Prison Population	29,978
Percentage Population Non-White	16%

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3. All other information is aggregate data for the states within the region.

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

**The Eighth Circuit
(Arkansas, Missouri, Nebraska Region)**

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	248
Total Number of Executions	29
Percentage of Death Sentences Carried Out	12%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	201
Number Reversed on Direct Appeal	56
Percentage Reversed on Direct Appeal	28%
Number Awaiting Direct Appeal	47
Percentage Awaiting Direct Appeal	19%
Number Forward to State Post-Conviction	145

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	≥7
Percentage Reversed on Post-Conviction	≥5%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	≥31%
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Federal Habeas Corpus

Number Reviewed on Habeas#	58
Number Reversed on Habeas#	19

Percentage Reversed on Habeas#	33%
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Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	54% [52%]
Overall Success Rate+	46% [48%]

Time

Average Time from Sentence to Execution+	9.88
Average Time from Sentence to Final Federal Relief+	9.79

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	14.24
Death Sentences per 100,000 Population	2.57
Death Sentences per 1000 Prison Population	14.10
NC Executions per 1000 Homicides	1.49
NC Executions per 100,000 Population	0.27
NC Executions per 1000 Prison Population	1.48

Demographic Information

Average Population	9,652,569
Average Homicides	757
Average Homicides Rate per 100,000 Population	7.84
Average Prison Population	17,592
Percentage Population Non-White	12%

NOTES:

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2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.

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

**The Ninth Circuit
(Arizona, California, Idaho, Montana, Nevada, Oregon, Washington Region)**

History

First Death Sentence	1974
First Direct Appeal	1975
First Consensual Execution	1979
First Non-Consensual Execution	1992

Sentences and Executions

Total Number of Death Sentences	1028
Total Number of Executions	15
Percentage of Death Sentences Carried Out	2%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	683
Number Reversed on Direct Appeal	259
Percentage Reversed on Direct Appeal	38%
Number Awaiting Direct Appeal	345
Percentage Awaiting Direct Appeal	34%
Number Forward to State Post-Conviction	298

State Post-Conviction [Excluding Oregon and Washington]

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	≥24
Percentage Reversed on Post-Conviction	≥8%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	≥41%
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Federal Habeas Corpus

Number Reviewed on Habeas#	34
Number Reversed on Habeas#	21

Percentage Reversed on Habeas#	62%
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Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	78% [76%]
Overall Success Rate+	22% [24%]

Time

Average Time from Sentence to Execution+	9.75
Average Time from Sentence to Final Federal Relief+	10.05

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	11.86
Death Sentences per 100,000 Population	2.60
NC Executions per 1000 Homicides	0.07
NC Executions per 100,000 Population	0.02
NC Executions per 1000 Prison Population	0.07

Demographic Information

Average Population	39,600,622
Average Homicides	3,770
Average Homicides Rate per 100,000 Population	9.52
Percentage Population Non-White	21%

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2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.
4. No state post-conviction information was available or collected for Oregon and Washington.
5. No Oregon cases were reviewed on federal habeas corpus during the study period.

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

**The Tenth Circuit
(Colorado, New Mexico, Oklahoma, Utah, Wyoming Region)**

History

First Death Sentence	1975
First Direct Appeal	1980
First Consensual Execution	1977
First Non-Consensual Execution	1990

Sentences and Executions

Total Number of Death Sentences	301
Total Number of Executions	11
Percentage of Death Sentences Carried Out	4%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	237
Number Reversed on Direct Appeal	115
Percentage Reversed on Direct Appeal	49%
Number Awaiting Direct Appeal	64
Percentage Awaiting Direct Appeal	21%
Number Forward to State Post-Conviction	122

State Post-Conviction [Excluding Colorado and New Mexico]

Number Reviewed on Post-Conviction	Unknown
	≥6
Number Reversed on Post-Conviction	
Percentage Reversed on Post-Conviction	≥5%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	≥51%
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Federal Habeas Corpus

Number Reviewed on Habeas#	17
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Number Reversed on Habeas#	8
Percentage Reversed on Habeas#	47%

Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	74% [73%]
Overall Success Rate+	26% [27%]

Time

Average Time from Sentence to Execution+	11.54
Average Time from Sentence to Final Federal Relief+	9.88

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	19.76
Death Sentences per 100,000 Population	3.09
NC Executions per 1000 Homicides	0.53
NC Executions per 100,000 Population	0.08
NC Executions per 1000 Prison Population	0.68

Demographic Information

Average Population	9,753,867
Average Homicides	662
Average Homicides Rate per 100,000 Population	6.79
Percentage Population Non-White	14%

NOTES:

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2. Data marked with a + reports the result of actions of both state and federal courts within the circuit.
3. All other information is aggregate data for the states within the region.
4. No state post-conviction information was collected or available for New Mexico and Colorado
5. No New Mexico or Colorado cases were reviewed on federal habeas corpus during the study period.

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

**The Eleventh Circuit
(Alabama, Florida, Georgia Region)**

History

First Death Sentence	1975
First Direct Appeal	1977
First Consensual Execution	1993
First Non-Consensual Execution	1983

Sentences and Executions

Total Number of Death Sentences	1503
Total Number of Executions	68
Percentage of Death Sentences Carried Out	5%

Error Rates

State Direct Appeal

Number Reviewed on Direct Appeal	1327
Number Reversed on Direct Appeal	627
Percentage Reversed on Direct Appeal	47%
Number Awaiting Direct Appeal	176
Percentage Awaiting Direct Appeal	12%
Number Forward to State Post-Conviction	700

State Post-Conviction

Number Reviewed on Post-Conviction	Unknown
Number Reversed on Post-Conviction	≥85
Percentage Reversed on Post-Conviction	≥12%
Number Forward to Federal Habeas Corpus	Unknown

State Direct Appeal and State Post-Conviction Combined

Overall Rate of Error Found by State Courts	≥54%
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Federal Habeas Corpus

Number Reviewed on Habeas#	215
Number Reversed on Habeas#	108

Percentage Reversed on Habeas#	50%
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Overall Rates Including [and Excluding] State Post-Conviction

Overall Error Rate+	77% [74%]
Overall Success Rate+	23% [26%]

Time

Average Time from Sentence to Execution+	9.52
Average Time from Sentence to Final Federal Relief+	8.82

Sentencing and Execution Rates

Death Sentences per 1000 Homicides	26.97
Death Sentences per 100,000 Population	7.09
Death Sentences per 1000 Prison Population	23.88
NC Executions per 1000 Homicides	1.20
NC Executions per 100,000 Population	0.32
NC Executions per 1000 Prison Population	1.06

Demographic Information

Average Population	21,190,210
Average Homicides	2,423
Average Homicides Rate per 100,000 Population	11.44
Average Prison Population	62,947
Percentage Population Non-White	23%

NOTES:

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3. All other information is aggregate data for the states within the region.

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