

THE CASE FOR COMMUTING NC'S DEATH ROW

Any public policy that costs taxpayers millions of dollars a year and has no measurable benefits to society is, by definition, a failure. One that threatens the lives of innocent people, the severely mentally ill, and other vulnerable groups, and is infected with racism, surely should be out of bounds

in a justice-seeking society. Yet, the death penalty remains on the books in North Carolina, despite the fact it's more expensive than imprisonment and has no proven deterrent effect on violent crime. If Gov. Cooper does not act now, the state could face a wave of executions after a 17-year pause.

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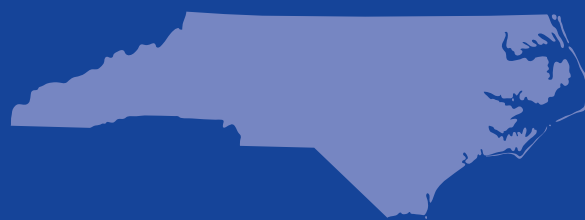
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THE URGENCY OF NOW

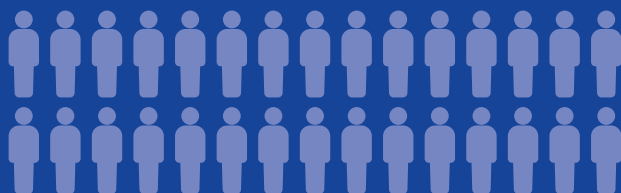
Due to ongoing litigation, no executions have been carried out in North Carolina since 2006. However, North Carolina has the fifth largest death row in the nation with 136 people, and more than 30 of them could be immediately eligible for execution once the Racial Justice Act litigation is concluded. The end of RJA litigation appears not just likely but inevitable, **moving North Carolina dangerously close to carrying out a wave of executions. North Carolina's Republican leaders have clearly stated their desire to begin using the state's execution chamber again.**

A conservative state legislature repealed the RJA in 2013, but a 2020 ruling from the NC Supreme Court preserved the right of death row prisoners to seek relief under the RJA. The current NC Supreme Court has already starkly reversed progress on racial justice and voting rights and has made clear it is ready to do the same on the death penalty. Chief Justice Paul Newby is on record opposing the 2020 ruling and no doubt has his sights on reversing it. Once that happens, the governor could be forced to make time-consuming and excruciatingly difficult decisions about whether to allow dozens of executions to go forward based on decades-old sentences.

5th largest death row in the nation



30+ people have exhausted all appeals aside from RJA



THE THREAT OF EXECUTING AN INNOCENT PERSON

A study published in the Proceedings of the [National Academy of Sciences](#) estimates that one in every 25 people sentenced to death in the United States is innocent. In North Carolina, twelve innocent people have been exonerated after receiving death sentences since the 1970s. Those men served a combined 165 years for crimes they did not commit. Henry McCollum spent an astonishing 30 years on death row before receiving a pardon of innocence. It's likely if not inevitable that more innocent people remain on North Carolina's death row. It's also no coincidence that eleven of our state's twelve exonerees are people of color.

1 in 25 people sentenced to death in the US are innocent

165 cumulative years served by 12 innocent men on death row in NC



Alfred Rivera and Ed Chapman



Henry McCollum

COMMUTATIONS ARE A RACIAL JUSTICE ISSUE

For most of its history, the death penalty was explicitly used to enforce slavery and Jim Crow, with hasty trials carried under the threat of mob lynching. Only since the late 1970s have North Carolina courts attempted to create a death penalty with the appearance of racial neutrality. Yet, the facts speak for themselves:



People of color make up less than 30 percent of North Carolina's population, but **60 percent** of those on death row.



Prosecutors exclude qualified Black jurors from capital trials at **more than twice** the rate of white jurors.



Nearly half the people on death row had an all-white jury or a jury with only a single person of color.



Defendants are **twice as likely** to be sentenced to death if they're accused of killing a white person.



Eleven of 12 of North Carolina's death row exonerees are people of color.

In modern trials, prosecutors have used animal imagery to describe Black defendants and urged all-white juries to weave the strands of evidence into a noose. The passage of the N.C. Racial Justice Act in 2009, with the overwhelming support of Democrats, was a recognition that North Carolina's death penalty had a race problem. However, the Racial Justice Act was repealed by Republicans as soon as it began to produce overwhelming evidence of what Superior Court Judge Gregory Weeks called "the persistent, pervasive, and distorting role of race in jury selection throughout North Carolina."

After the murder of George Floyd, Gov. Cooper said, "We must acknowledge racial inequities in our systems of law enforcement and criminal justice, and then work to eliminate them." The Governor's Task Force for Racial Equity on Criminal Justice called for the reinstatement of the RJA, and creation of a truth and reconciliation commission to investigate the death penalty. Neither has happened, and the North Carolina Supreme Court is poised to reject all remaining litigation under the RJA. If the governor grants clemency, he will leave a towering legacy of racial justice by ensuring that death sentences clouded by racism will never be carried out in North Carolina.

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From the Governor's Task Force Report

"Evidence demonstrates that the use of capital punishment in our state has been tainted by racial bias."

"North Carolina's death penalty prioritizes executions for cases with white victims and relies on the sentencing verdicts of juries, many of which have been all-white, that violate constitutional rules regarding jury selection."

"The death penalty is our harshest punishment and is clearly irrevocable once carried out. To see its relationship to white supremacy, one need only overlay a map of executions of Black defendants between 1972-2020 on a map showing the lynching of Black victims between 1883-1940."

he stumbled to his death, a great stupid, unlettered animal, too dense to know why, a victim of the instinct to fight back even though his enemy was too strong for him.

Lincoln County News, 1926

"He is a human hyena and should be treated as such," said one of the prosecuting attorneys. This was the main basis of appeal. Judge Grady

Gates County prosecutor, 1926

Man Protests His Innocence

John Andrew Roman, 30-Year-Old Negro, Fights As He Is Strapped In

Outwardly, Roman was calm when he was led into the gas chamber yesterday morning. But his eyes betrayed the fear of a man staring death in the face. In them was that intangible something seen only in the eyes of a trapped animal; eyes that darted furtively from first one "captor" or guard, then another.

A medium heavy mustache covered a full top lip that seemed firm, not tremulous. Roman's mouth was clamped tight and hard ridges rippled along either cheek as he obviously bit down hard on nothing.

The fight-back instinct of the trapped animal surged to a climax when officials had finished strapping the young Negro in the grim wooden chair.

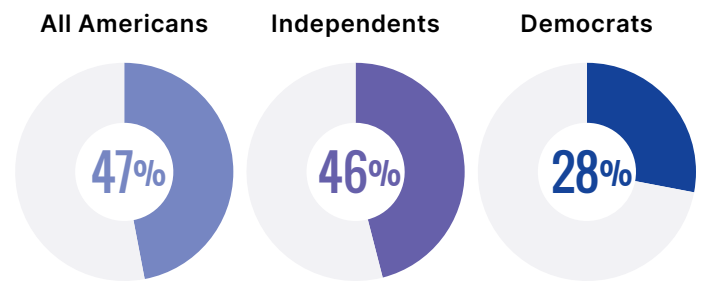
News and Observer, 1952

THE DEATH PENALTY IS OUTDATED AND UNPOPULAR

A [2023 Gallup poll](#) found the lowest support for the death penalty in decades. Only 47% of Americans and 28% of Democrats still believe the death penalty is applied fairly. Other [national polls](#) show that majorities of people from all political parties oppose the death penalty for people with mental illness and histories of severe trauma, two of the main groups of people currently on death row in North Carolina. In North Carolina, a [2019 poll](#) of NC voters showed that a majority supported alternative punishments rather than the death penalty. Seventy percent said they believed an innocent person had likely been executed in North Carolina.

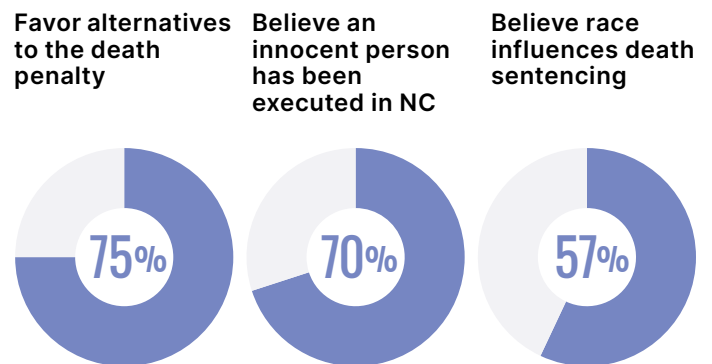
Since 2007, eleven states have legislatively abolished the death penalty. In several other states, including Pennsylvania, Louisiana, California, Oregon, and Ohio, governors have recently taken action to halt executions or commute death sentences. Nearly every current Democratic governor in the United States, save those in Kentucky and North Carolina, publicly opposes the death penalty. In the most recent presidential election, every single Democratic primary candidate publicly opposed the death penalty.

Americans who think the death penalty is applied fairly



Source: 2023 Gallup poll

NC voters who:



Source: 2019 poll by Public Policy Polling



NC'S DEATH ROW DOES NOT REFLECT ITS MODERN VALUES

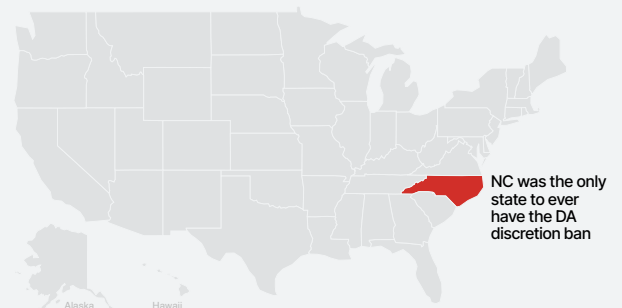
1/3 of people on NC Death Row are 60+



Nearly a third of people on North Carolina's death row are senior citizens, 60 years or older. That's because a majority of people on North Carolina's death row were sentenced in the 1990s, before a wave of exonerations eroded public support for the death penalty. Throughout that decade, NC prosecutors were legally required to seek death for every aggravated first degree murder, resulting in dozens of capital trials each year and some of the highest death-sentencing rates in the nation. NC lawmakers have since passed several reforms now considered essential to preventing wrongful convictions, including:

- 2008** • Reform package requiring law enforcement to record confessions and conduct suspect lineups according to protocols shown to prevent false identifications
- 2004** • Law granting defendants access to the prosecution's full file, including exculpatory evidence
- 2001** • Law prohibiting the death penalty for people with intellectual disabilities
- 2001** • Law creating a statewide indigent defense service, guaranteeing adequately funded and trained capital attorneys for the first time
- 2001** • Law granting prosecutors discretion to decide which cases should be prosecuted capitally

North Carolina's 1990s-era law preventing prosecutors from declaring cases non-capital is particularly striking. North Carolina is the only state in the country to ever have such a law, and nearly two-thirds of the people on death row were put there before it was repealed in 2001. Following the repeal of the prosecutor discretion ban, North Carolina's death sentences plummeted.





*It is rooted
in the legacy
of Racial Terror
and Lynching*

THE DEATH PENALTY PERPETUATES INJUSTICE

In addition to being disproportionately imposed by overwhelmingly white juries for crimes against white victims, the death penalty is frequently used to punish people from vulnerable populations. Virtually every person on North Carolina's death row falls into one or more of these groups:

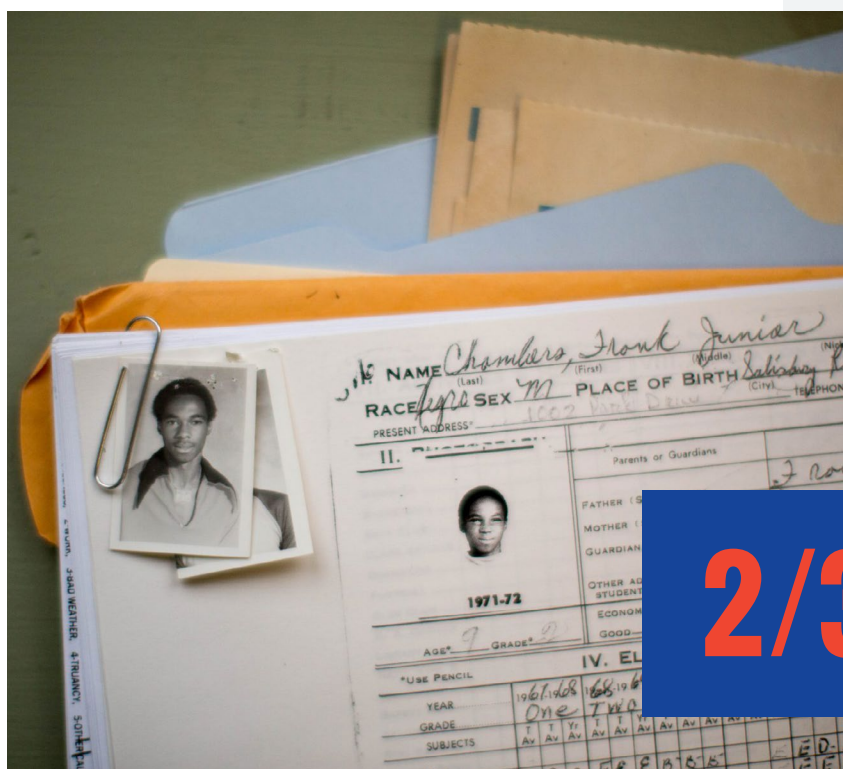
- 1 People who committed crimes before the age of 25, when the brain is not yet fully formed
- 2 People with intellectual disability or a history of brain injury or dysfunction
- 3 People who are now elderly, frail, and infirm
- 4 People raised in poverty, many of whom experienced malnourishment and homelessness
- 5 People with severe mental illness
- 6 People who suffered severe childhood trauma, including rape, beatings, and torture
- 7 People who served honorably in the U.S. military and, in some cases, suffered from post-traumatic stress disorder
- 8 People who were convicted only of felony murder, meaning the prosecutor was not even required to prove that they intended to cause the victim's death

MANY ON DEATH ROW DID NOT RECEIVE FAIR TRIALS

Two-thirds of people on death row were tried before the 2001 creation of North Carolina's Office of Indigent Defense Services, which coordinates capital defense statewide and assures adequate funding for legal fees, investigation, and experts. Before the creation of the office, attorneys were assigned and paid at the discretion of the local trial judge. In addition to being assigned unqualified counsel, many defendants were also convicted using junk science, false testimony, or questionable eyewitness identifications.

Issues affecting people currently on death row include:

- 1 Trial attorneys who were later disbarred or officially sanctioned
- 2 Trial attorneys who were completely inexperienced and unprepared to handle a capital trial
- 3 Defense attorneys who egregiously failed to investigate cases or present evidence on behalf of their clients
- 4 Evidence that was withheld, falsified, or misrepresented at trial
- 5 Witnesses who were compensated, sometimes secretly, for their testimony
- 6 Lost or destroyed evidence



2/3 of people on death row lacked legal protections of IDS



NC SHOULD PURSUE EVIDENCE-BASED STRATEGIES TO PREVENT VIOLENCE

When Gov. Cooper created the State Office of Violence Prevention, he cited the need for “a public health approach driven by data and informed by those most impacted.” He advocated for programs such as safe gun storage campaigns and background checks for firearm purchases, along with substance abuse counseling, job referral programs, and second chance hiring. These community-based approaches are proven to reduce crime.

The death penalty, on the other hand, has no deterrent effect on crime and costs the state millions for every capital trial. A 2009 study found that capital cases cost North Carolina at least \$11 million a year, and costs have surely gone up since then. This money would be better used to solve crimes, address dangerous staffing shortages in North Carolina’s prisons, and provide much-needed services to victims of crime.

