

# Equal Justice Initiative

## Criminal Justice Issues and Prisoners' Rights

<https://eji.org/issues/alabama-death-penalty/>

## Campaign and Advocacy

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Racial Justice

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124 results for "**Prison**"

Alabama is an outlier. As the death penalty declines across the country, Alabama still sentences more people to death per capita than any other state.

Alabama stands out among death penalty states for its failure to provide adequate counsel to people facing the death penalty at trial or on appeal. Compensation rates are too low and there's no statewide public defender system.

Alabama was the last state to abolish judge override after using it more than any other state to impose death sentences after jury verdicts for life. Nearly 20% of the people currently on death row were sentenced to death through judicial override.

Alabama consistently has one of the nation's highest per capita execution rates. With 70 executions and nine exonerations since 1976, Alabama has a shocking error rate: for every eight people executed, one has been exonerated. Since 2010, Alabama has executed two people who gave up their appeals while suffering from mental illness, three people whose judges sentenced them to death even though the jury voted for life imprisonment, and two men who were executed despite evidence of intellectual disability that should have barred their executions.

Alabama sentences more people to death per capita (.956 per 100,000 people) than any other state.<sup>1</sup> Death Penalty Information Center, [Death Sentencing Rates](#) (2013).

Alabama has executed 70 people since 1976. It consistently has one of the highest per capita execution rates in the nation.<sup>2</sup> Death Penalty Information Center, [State Execution Rates](#) (Feb. 11, 2015).

At least 170 Alabama death sentences have been reversed by state or federal courts and resulted in an exoneration, lesser conviction, or reduced sentence.

Since 2009, more than one-third of Alabama death sentences were imposed in Etowah, Houston, and Mobile Counties, which contain only 13% of the state's population.

### Related Case

EJI sued in federal court for access to postconviction counsel in Alabama.

Compensation rates for capital trial attorneys are extremely low. Until 1999, attorneys were paid only \$40 per hour for in-court work and \$20 for out-of-court work, and compensation for out-of-court work was capped at \$1000. Nearly half of the people currently on Alabama's death row were convicted under this compensation cap.

Low compensation rates continue to prevent qualified lawyers from providing adequate representation. The current hourly rate of \$70 for trial lawyers is far below market rates. And attorneys appointed on direct appeal where they must raise all trial errors to two state appellate courts are paid \$70 per hour with a cap of \$2500 per court.

Without enough funding, it's no surprise that Alabama courtrooms have seen terrible lawyering.

Court-appointed capital defense lawyers are paid so little that many refuse the work, so appointments often go to young, inexperienced lawyers or older ones who earn a living through court appointments leaving many people charged with capital offenses with inadequate representation at trial. One drunken attorney was ordered to sleep off his intoxication in jail during his client's capital trial,<sup>3</sup> Sara Rimer, [Questions of Death Row Justice For Poor People in Alabama](#) New York Times (Mar. 1, 2000). while another who represented capital defendants claimed to be a mystic, clairvoyant, and prophet who heard voices and relied on alleged paranormal powers in his representation.<sup>4</sup> [Neelley v. State](#), 642 So.2d 494, 498 (Ala. Crim. App. 1993).

People charged with capital murder in Alabama who cannot afford an attorney are constitutionally entitled to counsel for trial and direct appeal only.

People sentenced to death who lose their direct appeal can file a postconviction petition in state court which is the only way to argue that trial counsel was ineffective, the prosecutor hid favorable evidence, or jurors engaged in misconduct. Those claims require new evidence that was not included in the trial record.

As Alabama appellate court justices and bar presidents acknowledged in a friend-of-the-court brief to the U.S. Supreme Court:

Our capital system in Alabama is in disarray. Without counsel to vigorously represent death row inmates in state postconviction, we know that there have been instances where justice was not served.

Every state with the death penalty provides legal assistance for postconviction proceedings except Alabama.<sup>5</sup> [Maples v. Thomas](#), 565 U.S. 266 (2012). Until 2018, Alabama provided no legal assistance to prepare and file postconviction claims. People on death row cannot investigate and discover new evidence from their prison cells. And it's so difficult to navigate the complex legal and technical requirements that postconviction petitions filed without a lawyer's help usually wind up procedurally barred, even if they include valid claims.

Adequate postconviction representation requires hundreds of hours of work, including

But for all this work, Alabama caps compensation at \$7500, forcing lawyers to either skip important steps in their representation or work below minimum wage. (Before 2018, the cap was \$1500.)

EJI believes that Alabama needs a statewide indigent defender system and adequate compensation for appointed attorneys to ensure that poor people receive quality legal representation at all stages of the capital process.

### Related Resource

Learn more about the people put to death by the State of Alabama.

Lethal injection is the primary method of execution used by states and the federal government. States use a variety of protocols with one, two, or three drugs. The one- and two-drug protocols typically use a lethal dose of an anesthetic or sedative. The three-drug protocol uses an anesthetic or sedative, usually followed by pancuronium bromide to paralyze the person and potassium chloride to stop their heart.<sup>6</sup> Death Penalty Information Center, [Overview of Lethal Injection Protocols](#).

Traditional lethal injection drugs like pentobarbital have become harder for states to get because manufacturers won't sell them for use in executions. So states are illegally importing drugs, buying drugs from poorly regulated compounding pharmacies, and experimenting with untested drugs. Many passed secrecy laws so they don't have to reveal to courts, media, or the public where they're getting lethal injection drugs or how they're using them.<sup>7</sup> Death Penalty Information Center, [Behind the Curtain: Secrecy and the Death Penalty in the United States](#) (2018).

Secret experimental protocols led to three dramatically botched executions in the first seven months of 2014 alone.<sup>8</sup> Ben Crair, [2014 Is Already the Worst Year in the History of Lethal Injection](#), The New Republic (July 23, 2014).

In 2011, Alabama executed [Jason Williams](#) using a secret combination of drugs after drugs it had purchased illegally were confiscated by the DEA. In 2016, [Ronald Bert Smith](#) clenched his fists and raised his head, then heaved, gasped, and coughed while struggling to breathe for 13 minutes after lethal drugs were administered. And in 2019, witnesses observed disturbing evidence that [Michael Brandon Samra](#) struggled on the gurney before he died.

In 2018, Alabama joined Oklahoma and Mississippi in authorizing executions by nitrogen gas, a method that has never been used before anywhere in the world. There are a lot of concerns about this method of execution, including that:

### Related Resource

Read the stories of people who were exonerated and released from Alabama's death row.

Exonerations in Alabama show how racial bias, inadequate legal counsel, and official misconduct undermine the reliability of the death penalty.

Walter McMillian, who is Black, was convicted and sentenced to death for the murder of a young white woman who worked as a clerk in a dry cleaning store in Monroeville, Alabama. Law enforcement put him on death row before his trial, which lasted less than two days. The jury ignored multiple alibi witnesses, who were Black, who testified that Mr. McMillian was at a church event at the time of the crime. And the trial judge ignored the jury's life verdict and sentenced Mr. McMillian to death. He was released after EJI showed the state's witnesses lied on the stand and the prosecution illegally suppressed exculpatory evidence.

Gary Drinkard's appointed lawyers failed to present evidence showing he could not have committed the crime. He spent six years on death row before new lawyers won a new trial and proved Mr. Drinkard was at home when the crime was committed. He was acquitted in 2001.

Anthony Ray Hinton spent 30 years on Alabama's death row based solely on the state's assertion that a revolver taken from his mother's home was the gun used in both murders and in a third uncharged crime. Prosecutors refused to re-examine the case after EJI proved the revolver could not be matched to crime evidence, and it took 12 more years of litigation and a ruling from the U.S. Supreme Court to finally win his release.

### Related Report

EJI documents the unique and arbitrary practice of judge override in Alabama.

Since 1976, Alabama judges have overridden jury verdicts 112 times. The override statute gave judges authority to override life or death verdicts, but 91% of overrides overruled jury verdicts of life to impose the death penalty.

Judge override has been a significant contributor to Alabama's high death sentencing rate. Nearly 20% of the people currently on death row were sentenced to death through judicial override.

Florida and Delaware are the only other states that permitted judge override. It ended in 2016.<sup>10</sup> Debra Cassens Weiss, [Supreme Court Stays Execution of Alabama Man in Judicial Override Case](#), ABA Journal (Jan. 29, 2018).

Alabama became the last state to abolish judge override on April 11, 2017. State prosecutors have argued the new law does not affect earlier cases and are still seeking to execute people sentenced to death by elected judges who overrode jury life verdicts.

EJI has been representing people on Alabama's death row for over 30 years.

EJI's *Alabama Capital Defense Trial Manual* is a 518-page comprehensive review of criminal law, criminal procedure, and the trial process, with an emphasis on how to defend people facing the death penalty.

EJI won a Supreme Court ruling that protects people who cannot consistently orient to time and place due to dementia from execution under the Eighth Amendment.

A powerful true story about EJI, the people we represent, and the importance of confronting injustice, *Just Mercy* is a bestselling book by Bryan Stevenson that has been adapted into a feature film.

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Equal Justice Initiative 2022