



Death Penalty Policy Project

Submission of the
Death Penalty Policy Project
in response to the call for inputs
for the Secretary-General's report
to the General Assembly
on a moratorium
on the use of the death penalty

April 12, 2024

The Death Penalty Policy Project is a new non-governmental organization established in 2023 to provide information, analysis, and critical commentary on capital punishment and the role the death penalty plays in mass incarceration in the United States. The project is housed within the Phillips Black Inc. public interest legal practice.

April 12, 2024

Hon. Volker Türk
United Nations High Commissioner for Human Rights
United Nations Office at Geneva
CH 1211 Geneva 10, Switzerland

Re: Call for Inputs for the Secretary-General's Report to the General Assembly
on a Moratorium on the Use of the Death Penalty

Your Excellency:

The Death Penalty Policy Project respectfully submits this response to the call for inputs for the Secretary-General's report to the U.N. General Assembly on the question of a moratorium on the use of the death penalty.

Public support for the death penalty in the United States is at a 50-year low and capital punishment is disappearing from much of the United States. However, where it persists, the punishment is being administered in a manner that continues to violate numerous human rights norms. This submission cannot begin to address the wide range of important developments in the U.S. — favorable and unfavorable — since the adoption of U.N.G.A. Resolution 77/222 on 15 December 2022. Instead, we address a few important death-penalty trends.

- **The decline of the death penalty across the United States.**

For the first time since early 1990, fewer than 2,300 people are on death rows across the United States. In 2023, for the third time in four years, only five states carried out executions, down from 20 states in 1999. The 24 U.S. executions in 2023 were 75% below the peak of 98 in 1999 and marked the nation's ninth consecutive year with fewer than 30. The 21 new death sentences imposed in 2023 were the fewest in any non-pandemic year since states resumed capital sentencing in 1972 after the U.S. Supreme Court decision in *Furman v. Georgia* struck down all existing death penalty statutes. The U.S. has averaged only 28.1 new death sentences/year over the past eight years — less than 1/10 the 289.7 average of new death sentences imposed in the U.S. from 1986 through 1996.

In 2023, Washington State formally repealed its death penalty statute after its supreme court declared in 2018 that the law violated its state constitution. In January 2024, citing "a history of executions that have resulted in serious questions about [the state's] execution protocols," Arizona Gov. Katie Hobbs appointed a Death Penalty Independent Review Commissioner "to review and provide transparency" into the state's execution practices. No executions will be carried during the course of that review. On February 16, Pennsylvania Gov. Josh Shapiro extended the commonwealth's moratorium on executions and called for legislation to abolish the death penalty in the state.

Ohio Gov. Mike DeWine granted reprieves that have put off the executions of nine men scheduled to be put to death in 2023 and six of the scheduled executions in 2024. His orders cited “ongoing problems involving the willingness of pharmaceutical suppliers to provide drugs” to the state “without endangering other Ohioans.” He has indicated that no executions will take place in the state in 2024.

As of today, 23 states and the District of Columbia have legislatively or judicially abolished the death penalty. Twenty-seven states, the federal government, and the U.S. military authorize capital punishment but four of those jurisdictions — California, Oregon, Pennsylvania, and the federal government — have formal moratoria on executions. Other executive action is also halting executions in Arizona, Ohio, and Tennessee. Two death penalty states, Oregon and Wyoming, have no one on death row. Fourteen death-penalty states, plus the U.S. military, have not executed anyone in more than a decade.

In October 2023, the Gallup organization found U.S. support for the death penalty to be lower than at any time since the 1970s. 53% of respondents told Gallup they favored the death penalty for individuals convicted of murder — down from 80% in 1994, and the fewest since before the Supreme Court decided *Furman*. 44% told Gallup they opposed the death penalty, the most since May 1966 and the second most since Gallup first asked the question in 1936.

- **More than 1,300 U.S. death-row prisoners have faced execution for more than two decades**

In October 2022, two U.N. human rights Special Rapporteurs characterized the “death row phenomenon” — the deterioration in prisoner’s mental health resulting from extended incarceration under threat of execution — and “the near total isolation of those convicted of capital crimes” as a form of inhuman treatment that violates international human rights norms. A [Death Penalty Information Center report](#) in June 2020 found that at least 1,300 prisoners had been incarcerated on U.S. death rows for more than two decades, in clear violation of those norms. Since then, the average length of time individuals spend facing the threat of execution has only increased. Most death-row prisoners are, or previously have been, incarcerated in prolonged isolation that violates international human rights norms.

- **New laws expanding crimes subject to the death penalty and making capital punishment easier to impose.**

After three jurors in the Parkland high school shooting death-penalty trial voted for life, sparing Nikolas Cruz the death penalty in October 2022, Gov. Ron DeSantis spearheaded legislation to permit the trial judge to impose the death penalty if eight of twelve jurors recommend death. The bill, and its lowest-in-the-nation threshold for the death penalty, became law in April 2023. Less than a month later, in a direct challenge to U.S. Supreme Court precedent limiting the death penalty to crimes in which a victim was killed, Florida [enacted a second law](#) expanding death-eligible crimes to include sexual battery of a child younger than 12.

That law clearly violates both U.S. human rights obligations and the U.S. Supreme Court's ruling in [Kennedy v. Louisiana](#) declaring the death penalty unconstitutional for child rape. The [International Covenant on Civil and Political Rights](#) permits capital punishment "only for the most serious crimes." ICCPR, Article 6, Section 2. That provision has long been recognized as encompassing only intentional murders. Nonetheless, legislators have since introduced bills in Arizona, Hawaii, Idaho, Missouri, New Mexico, South Carolina, South Dakota, Tennessee, and the U.S. Congress that would permit capital punishment for various forms of child sexual abuse. The Tennessee bill has passed the state house and has received preliminary approval in the senate. The Idaho bill has passed the state house and is now in a senate committee.

- **Execution secrecy and execution by nitrogen suffocation.**

In response to difficulty in lawfully obtaining execution drugs, U.S. states that want to carry out executions have adopted [execution secrecy practices](#) and enacted new execution methods that violate U.S. international human rights obligations. In 2023, South Carolina joined 14 other U.S. death penalty states in enacting execution secrecy laws that restrict what execution witnesses may see or hear and prevent the public from learning critical information about lethal substances used to execute prisoners and the qualifications of individuals who manufacture or administer those substances.

Some death penalty states also have attempted to expand the methods they authorize to carry out executions. Since December 2022, legislation has been introduced in Kansas, Louisiana, Nebraska, and Ohio to permit execution by gas "hypoxia" — a euphemism for suffocation. In January 2024, Louisiana legislature approved and new Gov. Jeff Landry [signed into law](#) a bill bringing back the electric chair as an approved execution method and authorizing execution by nitrogen suffocation. The new law also expanded Louisiana's secrecy statutes to withhold from the public information related to the newly authorized execution methods.

In January 2024, Alabama became the first state to execute a prisoner by nitrogen suffocation. U.N. human rights experts condemned the execution of Kenneth Smith as violating international prohibitions against forced human experimentation and inhumane and torturous treatment of prisoners. Alabama authorities called Mr. Smith's execution "textbook," despite eyewitness reports that he convulsed violently for several minutes, followed by at least five minutes of gasping desperately for air. He remained conscious for at least nine minutes. The eyewitness accounts mirrored the descriptions of gas euthanasia that veterinary associations have provided in explaining why nitrogen gas is too cruel to employ in euthanizing household pets and other mammals.

- **The unavailability of clemency.**

The ICCPR grants death-sentenced prisoners "the right to seek pardon or commutation of the[ir] sentence." Yet that right is illusory in most U.S. death-penalty states. Most [humanitarian grants of clemency](#) to U.S. death row prisoners have been part of group commutations based upon systemic policy concerns. Since 1977, [1,587 prisoners have been](#)

[executed](#), while fewer than 80 who faced imminent execution — less than two per year — have had their death sentences commuted. The April 8, 2024 decision by Missouri Gov. Mike Parson to deny clemency to Brian Dorsey illustrates this problem. Parson — who has never commuted a death sentence since becoming governor in 2018 — rejected pleas for mercy for Dorsey from 72 corrections officials, five jurors, several relatives of the victims, a former Missouri Supreme Court judge, a bipartisan group of state lawmakers, and multiple faith leaders.

Last-minute efforts by Nevada Gov. Steve Sisolak to commute the death sentences of 57 death-row prisoners before he left office in January 2023 failed, as did former Louisiana Gov. John Bel Edwards' attempt to secure clemency recommendations from the Louisiana pardons board for 56 death-row prisoners. Efforts underway to persuade California Gov. Gavin Newsom, North Carolina Gov. Roy Cooper, and President Joe Biden to commute to sentences of death-row prisoners in their jurisdictions have the potential, if successful, to prevent the executions of more than 800 people.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'RD', with a long horizontal line extending to the right.

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