



# Bureau of Justice Statistics Bulletin

## Capital Punishment 1983

Five persons were executed during 1983, bringing to 11 the total executed since the reinstatement of capital punishment in 1972 (figure 1).<sup>1</sup> This increase in the pace of executions came as many inmates on death row neared the end of a series of appeals and as the courts became increasingly reluctant to sanction a lengthy appeals process in capital punishment cases.

The executions that took place during 1983 brought to 3,870 the total conducted under civil authority in the United States since national reporting began in 1930 (figure 2).<sup>2</sup> After 1967, an unofficial moratorium on executions prevailed as legal challenges to the death penalty were pressed at various court levels. There were no executions until 1977, when one occurred. Two more followed in 1979, one in 1981, and two in 1982. Two-fifths of all executions since 1930 have taken place in five States, each with over 200 executions (figure 3).

### Capital punishment in the courts

The number of successful challenges to the constitutionality of capital punishment laws has dropped off sharply in the past several years as guidelines set down in U. S. Supreme Court cases during the 1970's became incorporated into State capital punishment laws. In the 1972 decision in *Furman v. Georgia*, the Supreme Court for the first time struck down a State capital punishment law as unconstitutional under the Eighth Amendment. Five justices, in as many opinions, found the Georgia capital punishment law objectionable for a number of reasons, most of which were

related to the arbitrary application of the death sentence. Many States responded by adopting new laws designed to answer the Court's objections.

In 1976, in five cases considered together, the Court addressed these new laws and attempted to clarify its decision in *Furman*. In *Woodson v. North Carolina* and *Roberts v. Louisiana*, the Court struck down as unconstitutional State laws that eliminated all discretion from the sentencing process by imposing a mandatory death penalty for specific crimes. However, in *Gregg v. Georgia*, *Jurek v. Texas*, and *Proffitt v. Florida*, the Court upheld laws that provided guidelines to assist the sentencing authority in exercising the required discretion as it considers aggra-

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Data on persons under sentence of death are collected annually for the Bureau of Justice Statistics as part of the National Prisoner Statistics (NPS) program. Data are obtained from the departments of corrections in each of the 50 States and the District of Columbia. The Bureau of Justice Statistics gratefully acknowledges the cooperation of State officials whose generous assistance and unfailing patience make National Prisoner Statistics possible.

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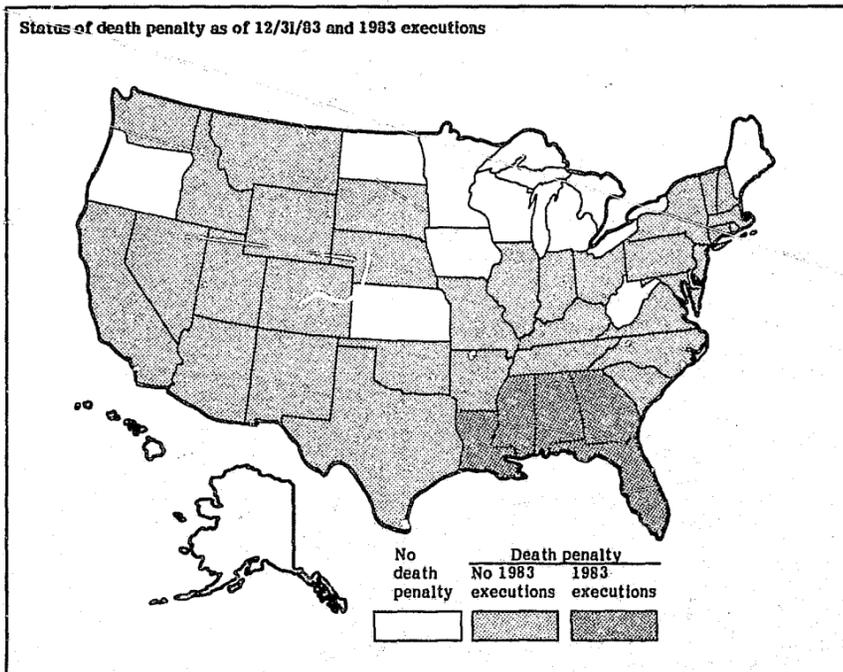


Figure 1

<sup>1</sup>As of June 20, 1984, 9 more persons had been executed, bringing the new total to 20 since 1977.

<sup>2</sup>In addition to those executed under civil authority, 160 persons have been executed under military authority since 1930.

Number of persons executed, 1930-83

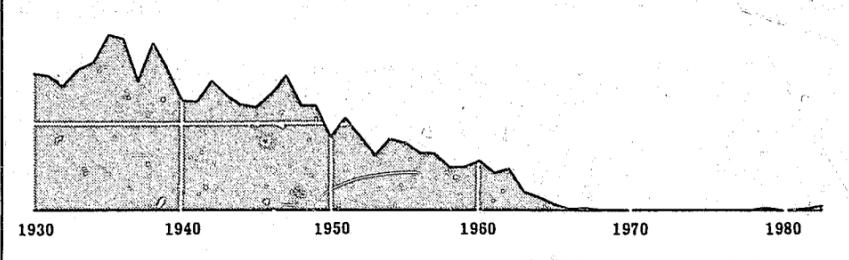


Figure 2

vating and mitigating circumstances surrounding the crime.

Further refinements were provided in a number of cases that reached the U.S. Supreme Court in the late 1970's and early 1980's. By 1982, few cases before the Court had the potential for producing the broad application of earlier decisions. In 1982, and again in 1983, no one was removed from death row because a State capital punishment law had been declared unconstitutional.

During 1983, one of the more important remaining issues in capital punishment was brought to the U. S. Supreme Court—that of proportionality. Proportionality, in the sense that capital punishment must not be excessive and disproportionate given the type of crime, had been mentioned in the plurality opinion of Justice Stewart in *Gregg v. Georgia* as being part of Eighth Amendment death penalty analysis. However, the concept that States must make punishment for a crime similar to sentences for similar crimes committed by offenders with similar characteristics had not yet been addressed by the Nation's highest court.

Early in 1984, the U. S. Supreme Court ruled in *Pulley v. Harris* that a proportionality review by a court of statewide jurisdiction is not a Constitutional requirement. Although many State death penalty laws provide for such a review, the court ruled that the Eighth Amendment does not require it as an invariable rule in every case. The Court held that California's death penalty statute and similar post-*Furman* laws, while perhaps "occasionally producing aberrational outcomes," were "a far cry from the major systemic defects identified in *Furman*," and thus passed constitutional muster under the Eighth Amendment.

Three important cases were handed down by the U.S. Supreme Court on July 6, 1983: *California v. Ramos*, *Barclay v. Florida*, and *Barefoot v. Estelle*. In 1982, the California Supreme Court had ruled (in *People v. Ramos*) that a required instruction to the jury that a life sentence without parole could be commuted by the

Governor rendered the State's death penalty law unconstitutional under the Eighth Amendment of the Federal Constitution. However, the U. S. Supreme Court reversed that decision and held that the Federal Constitution does not prohibit such instructions to the jury. By bringing to the jury's attention the possible commutation of a life sentence, the instruction, the Court

State	Number executed	
	since 1930	since 1977
Georgia	367	1
New York	329	
Texas	298	1
California	292	
North Carolina	263	
Ohio	172	
Florida	172	2
South Carolina	162	
Mississippi	155	1
Pennsylvania	152	
Alabama	136	1
Louisiana	134	1
Arkansas	118	
Kentucky	103	
Tennessee	93	
Virginia	93	1
Illinois	90	
New Jersey	74	
Maryland	68	
Missouri	62	
Oklahoma	60	
Washington	47	
Colorado	47	
Indiana	42	1
West Virginia	40	
District of Columbia	40	
Arizona	38	
Federal system	33	
Nevada	30	1
Massachusetts	27	
Connecticut	21	
Oregon	19	
Iowa	18	
Kansas	15	
Utah	14	1
Delaware	12	
New Mexico	8	
Wyoming	7	
Montana	6	
Vermont	4	
Nebraska	4	
Idaho	3	
South Dakota	1	
New Hampshire	1	
Wisconsin	0	
Rhode Island	0	
North Dakota	0	
Minnesota	0	
Michigan	0	
Maine	0	
Hawaii	0	
Alaska	0	

Figure 3

said, "invites the jury to assess whether the defendant is someone whose probable future behavior makes it undesirable that he be permitted to return to society..." Such considerations were approved of in *Jurek v. Texas*, but were emphasized as appropriate in *California v. Ramos*.

The *Barclay* case dealt with violations of State law committed during sentencing proceedings in capital punishment cases. In *Barclay*, the trial judge sentenced the defendant to death on the basis of several considerations. One of these, the defendant's past criminal record, was improper under the capital punishment statute. The Florida Supreme Court had upheld the sentence because under "harmless error analysis" it was clear that the judge's improper use of the defendant's record was a harmless error that did not alter the final sentence. On review, the Supreme Court upheld the Florida decision.

The *Barefoot* case was notable both because it upheld the admissibility of psychiatric evidence predicting future dangerousness and because the High Court approved the acceleration of the appeals process in capital cases. The Court used *Barefoot* to establish general guidelines for habeas appeals of capital sentences. The Court held that a strong showing that a federal right has been denied is needed to obtain a certificate of probable cause, and that even with the certificate, the court of appeals may expedite its consideration of the merits of habeas appeals. Thus, the court of appeals may deny an application for a stay of sentence if, in doing so, it determines that the defendant lacks substantial grounds on the merits; such procedures were held especially appropriate where the petition is a second or successive collateral attack.

On October 11, 1983, the U.S. Court of Military Appeals, the Nation's highest military court, ruled that sentencing procedures in the Uniform Code of Military Justice did not conform to U. S. Supreme Court guidelines set down in the 1972 and 1976 landmark decisions. As a result of this decision, *U.S. v. Matthews*, the death sentences of seven men condemned under court-martial procedures were removed. New regulations remedying the defects in the code were promulgated in an executive order effective January 24, 1984.

Among the issues still pending at yearend 1983 were the effectiveness of counsel in capital cases, the practice by trial judges of overriding a jury's sentence recommendation, and the admissibility of research findings of racial

discrimination in the imposition of the death penalty.

Massachusetts, which had an earlier law struck down in 1980, enacted a new law effective January 1, 1983, so that by the end of 1983, 38 States and the Federal government had laws authorizing the death penalty. This was the largest number of jurisdictions authorizing the death penalty since it was declared unconstitutional in 1972.

Persons under sentence of death at yearend 1983

The number of persons under sentence of death at yearend 1983 was 1,202, a 13% increase over yearend 1982 (figure 4). During 1983, 252 persons received the death penalty and 113, including the 5 executed, were removed from death row. The 252 death penalties imposed during 1983 was higher than in any other year since

Region and State	Prisoners under sentence of death 12/31/82	Changes during 1983		Prisoners under sentence of death 12/31/83
		Received under death sentence	Removed from death row (including executions*)	
United States	1,063	252	113*	1,202
Male	1,049	249	109*	1,189
Female	14	3	4	13
Federal <sup>2</sup>	0	0	0	0
State	1,063	252	113*	1,202
Northeast	26	19	8	37
Connecticut	0	0	0	0
Massachusetts	0	0	0	0
New Hampshire	0	0	0	0
New Jersey	0	3	0	3
New York	0	1	0	1
Pennsylvania	26	15	8	33
Vermont	0	0	0	0
North Central	101	39	4	136
Illinois	50	16	2	64
Indiana	15	6	0	21
Missouri	21	2	0	23
Nebraska	12	0	2	10
Ohio	3	15	0	18
South Dakota	0	0	0	0
South	721	143	82	777
Alabama	38	13	2*	49
Arkansas	23	1	2	22
Delaware	6	0	0	6
Florida	186	34	27*	193
Georgia	105	7	10*	102
Kentucky	13	6	0	19
Louisiana	21	5	2*	24
Maryland	14	0	3	11
Mississippi	35	5	3*	37
North Carolina	28	11	6	33
Oklahoma	39	8	8	39
South Carolina	17	12	1	28
Tennessee	28	5	2	31
Texas	149	33	19	163
Virginia	19	3	2	20
West	215	51	14	252
Arizona	51	7	7	51
California	120	33	4	149
Colorado	2	0	1	1
Idaho	7	0	0	7
Montana	3	1	0	4
Nevada	18	6	1	23
New Mexico	5	1	0	6
Utah	3	1	0	4
Washington	3	2	1	4
Wyoming	3	0	0	3

NOTE: States not listed and the District of Columbia did not have the death penalty as of 12/31/83. Some of the figures shown for yearend 1982 are revised from those shown in Capital Punishment 1982 (final report), NCJ-91533. The revised figures include 23 inmates who were reported late to the NPS program or who were not in the custody of State correctional authorities by 12/31/82 (8 in Louisiana, 6 in Georgia, 2 in Alabama, and 1 each in Delaware, Illinois, Nevada, Oklahoma, Pennsylvania, Tennessee, and Texas), and exclude 10 inmates relieved of the death sentence before 12/31/82 (3 in Florida, 2 each in Mississippi and Tennessee, and 1 each in Arkansas, Georgia, and Oklahoma).

\* 1983 executions: 1 each in Alabama, Florida, Georgia, Louisiana, Mississippi. <sup>1</sup>Includes five inmates who died of natural causes (one each in Alabama, Florida, Georgia, Louisiana, and Mississippi), three who committed suicide (one each in California, Colorado, and Texas), and one who was killed attempting to escape while on a court appearance (Texas). <sup>2</sup>Excludes prisoners held under Armed Forces jurisdiction. Six such prisoners who were under sentence on 12/31/82 and one who was sentenced during 1983 were relieved of the death sentence on 10/11/83, leaving no one under military death sentence at yearend 1983.

Figure 4

at least 1968 except 1982. The number removed from death row during 1983 was higher than in the four previous years.

Since 1953, when the official count of those under sentence of death began, the number under sentence at yearend has increased almost tenfold (figure 5). The buildup on the Nation's death rows initially coincided with the legal challenges to the death penalty in the 1960's. All persons under sentence of death at the time of the 1972 Supreme Court decisions were eventually removed from death row. The buildup began anew as offenders were sentenced under laws passed after the 1972 and 1976 landmark decisions, marking the sharpest rise in the number of death-row inmates since data were first compiled.

All death-row prisoners remaining under sentence at yearend had been convicted of murder. One-third of the 902 persons under sentence of death for whom the information was available were already under sentence for another crime when arrested for capital murder. Most of them (19% of those reporting) were on parole, while 6% were on probation, 4% serving time in prison, 3% on escape, and 2% on various other types of prison release. Two-thirds of all death-row prisoners had been convicted of felonies before they were charged with a capital crime.

Of the 38 States authorizing the death penalty, 33 had prisoners under sentence of death at yearend 1983, more States than in any previous year. Five States (Connecticut, Massachusetts, New Hampshire, South Dakota, and Vermont) and the Federal system had death penalty laws on their books but no one on death row. No one has been under sentence of death in Federal facilities since 1977.

The 1,202 persons on death row were concentrated, as in previous years, mainly in the South, which held almost two-thirds of all death-row prisoners. Some 21% were held in correctional facilities in the West, 11% in the North Central States, and 3% in the Northeast. The States with the largest numbers on death row were Florida (193), Texas (163), California (149), and Georgia (102) (figure 4). Nine States held between 25 and 99 inmates under sentence of death; 10 held between 10 and 24 inmates; and 10 held between 1 and 9 inmates.

About a fifth of those on death row at yearend had received sentences during 1983. The median time on death row was 28 months, but almost 3 in 10 inmates had spent at least 4 years under sentence of death by yearend,

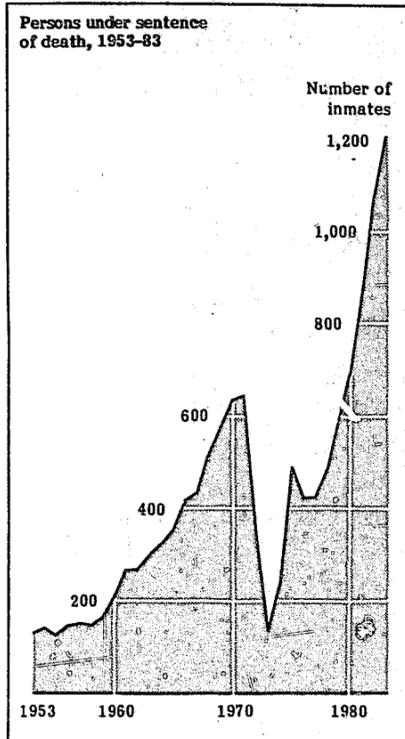


Figure 5

including 143 persons with 6 years or more on death row. The median age of death row prisoners was about 31 years, although the ages ranged from 17 to 82.

There were 500 black inmates under sentence of death in 1983. Since 1978, the proportion of death-row inmates who were black has remained about 2 in 5. Between 1968 and 1975, the proportion exceeded 50%; it dropped to 46% in 1976, 45% in 1977, and 41% in 1978. Blacks also amounted to about 2 in 5 inmates receiving new death sentences in 1983. Since 1968, the proportion of those receiving death sentences each year who were black ranged from 38% to 62%.

The 13 women on death row at year-end 1983 amounted to about 1% of all death-row inmates. Their number has more than tripled since 1972 (figure 6).

An increase in the number of Hispanics on death row brought to 72 the number of Hispanic death-row inmates at yearend 1983. Twelve States held at least one Hispanic under sentence of death with the largest numbers being held in States with relatively large Hispanic populations: California (24), Texas (20), Florida (8), and Arizona (6). Hispanics have generally averaged about 6% of the total death-row population in the United States since data on ethnicity were first collected in 1978. Their increase on death row in

relation to most non-Hispanics (about twice as fast since 1978) may in part reflect improved reporting on ethnicity.

Like that of most State prisoners, the educational level of death-row inmates was generally low; only 41% had completed high school, while 1 in 10 had not graduated from the eighth grade. Most death-row prisoners were not married; some 44% had never married, 20% were divorced or separated, and 2% were widowed.

#### Persons sentenced to death during 1983

Twenty-seven States, one less than in 1982, imposed death sentences during 1983. The number of new death sentences imposed fell from 281 in 1982 to 252 in 1983, a decline of over 10%.<sup>3</sup> New York imposed its first death sentence since 1977 and New Jersey its first since a new law was enacted in 1982. Montana and Utah were the only other States that imposed sentences of death in 1983 but not 1982. Five States that had new death-row prisoners in 1982 imposed no death sentences in 1983: Colorado, Delaware, Idaho, Maryland, and Wyoming.

Three women were sentenced to death during 1983, two in Ohio and one in Alabama. Ohio last had women on death row in 1978, when four women had death sentences lifted when Ohio's law was found to be unconstitutional. Alabama had begun the year with one woman on death row.

Eighteen Hispanics received death sentences in 1983, the largest numbers being sentenced in California (6), Texas (4), and Florida (3).

The median age of those newly sentenced to death was just over 27 years, slightly higher for whites and slightly lower for blacks. With the exception of their being younger on the average, in-

<sup>3</sup>Each year, some death sentences from previous years are reported for the first time, so the magnitude of the decrease may be lessened after the 1983 figures are revised.

Number of women on death row, yearend 1972-83												
State	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
United States	4	3	3	8	7	6	5	7	9	11	14	13
California	3	1	1	1	2							
Georgia	1	2	1	1	1	1	1	2	3	4	4	3
North Carolina		1	2	3			2	1	1	1	1	1
Ohio				2	3	4						2
Oklahoma				1				1	1	1	2	2
Florida					1	1	1	1				
Alabama							1	1		1	1	2
Texas								1	2	2	2	
Kentucky									1	1		
Maryland											2	1
Mississippi											1	1
Nevada											1	1

Figure 6

mates sentenced in 1983 were similar in most other characteristics to those already on death row.

#### Persons leaving death row during 1983

In all, 21 States had a combined total of 113 persons removed from death row during 1983. Ten States (Delaware, Idaho, Indiana, Kentucky, Missouri, Montana, New Mexico, Ohio, Utah, and Wyoming) had no removals, although they began the year with prisoners under sentence of death.

Of the 113 inmates who left death row—

- 60 had their sentences lifted but convictions upheld
- 28 had their sentences and convictions vacated
- 11 had their sentences commuted
- 5 were executed
- 5 died of natural causes
- 3 died by suicide
- 1 was killed while attempting escape

The five persons executed spent from 4-1/2 to 10 years on death row, with an average stay of 7 years and 2 months. In addition to the five who were executed, five persons died of natural causes, three committed suicide, and one was killed attempting to escape while in court. Since the major capital punishment decisions handed down by the Supreme Court in 1976, the number removed from death row has dropped each year with two exceptions—1980 (when 42 persons were removed from Alabama's death row after a major court decision there) and 1983.

Over half of the 99 persons no longer under sentence of death at the end of the year were serving reduced sentences (almost all of them life). Twenty-one persons were still awaiting retrial and 19 persons were awaiting resentencing. One person had all capital charges dropped.

The median time spent on death row by those who left during 1983 was 38

months. For the first time since the death row buildup began anew after 1976, the median time was lower than that of the previous year. More than half of the removals occurred in three of the four States with the largest death-row populations, Florida, Georgia, and Texas. California, with the Nation's third largest death-row population, had four removals from death row during 1983.

#### Death penalty laws in 1983

During 1983, 11 States modified existing death penalty statutes. Six of the 11 changed those sections of the law relating to the method of execution. Four States (Arkansas, Montana, North Carolina, and Utah) added lethal injection as a method of execution; Illinois changed from electrocution to lethal injection and Nevada from gas to lethal injection. For the remaining five States, the changes were mainly of a technical nature, including renumbering sections of the law, changing words, and correcting citations. Indiana added a new aggravating circumstance to its capital punishment law: that of murder committed by a person serving a prison term with at least 20 years of time remaining.

Fourteen States provided for more than one method of execution, usually lethal injection or an alternate method, at the election of the condemned prisoner (figure 7). Electrocution was the most common method of execution provided for in the statutes; 18 States had electrocution as a method of execution. Lethal injection was permitted in 13 States; lethal gas in 8 States; hanging in 4 States; and a firing squad in 2 States. Some States have anticipated the possibility that lethal injection may be found unconstitutional by providing for an alternate method. Each of the other four methods challenged on Eighth Amendment grounds as cruel and unusual punishment have been found constitutional.

Almost all death penalty statutes provide for an automatic review of all

death sentences. Some require a review of both conviction and sentence while others require only a review of the sentence. Typically, the review is undertaken by the State supreme court and results in affirming or vacating the conviction alone or both the conviction and sentence. If either the conviction or the sentence is vacated, the case may be remanded to the trial court for additional proceedings. Some statutes also allow the State supreme court to commute a death sentence to life imprisonment.

In some States, a minimum age for the imposition of the death penalty is cited in State law; in others, the minimum age is, in effect, the youngest age at which a juvenile may be transferred to adult court by judicial waiver. In South Dakota, for example, 10 is the youngest age at which a juvenile may be waived to adult court, and thus, at least technically, the youngest age at which the death penalty may be imposed. At the opposite extreme, in New York only persons over age 18 may be executed. The majority of States put the age limit at 15 to 18, with 18 being the most prevalent age. However, a number of States have neither a specific age at which a juvenile may be transferred to criminal court by judicial waiver nor a minimum age at which the death penalty may be imposed. In such States, the decision to file capital charges against youthful defendants is at the discretion of the prosecutor.

#### Methodological note

Statistics in this series may vary from other death-row counts for any of the following reasons:

Inmates are not added to the NPS death-row counts at the time the court hands down sentence, but at the time they are admitted to a State or Federal correctional facility.

Inmates sentenced to death under statutory provisions later found unconstitutional are removed from the death-row count on the date of the relevant court finding rather than on the date

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the finding is applied to individual cases. Thus, persons who are technically under sentence of death, but who are no longer at risk, are not counted.

NPS death-row counts are always as of the last day of the calendar year and will therefore differ from estimates made for more recent periods.

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Method of execution, by State, 1983	
Method	States that use method
Electrocution	Alabama, Arkansas*, Connecticut, Florida, Georgia, Indiana, Kentucky, Louisiana, Massachusetts*, Nebraska, New York, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont, Virginia
Lethal injection	Arkansas*, Idaho*, Illinois, Massachusetts*, Montana*, Nevada, New Jersey, New Mexico, North Carolina*, Oklahoma, Texas, Utah*, Washington*
Lethal gas	Arizona, California, Colorado, Maryland, Mississippi, Missouri, North Carolina*, Wyoming
Hanging	Delaware, Montana*, New Hampshire, Washington*
Firing squad	Idaho*, Utah*

Figure 7

Bulletin

**END**