

# Rates of Reversals in the North Carolina Death Penalty

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Sixty-seven percent of all death sentences imposed in the modern era in North Carolina have subsequently been overturned on appeal. Only twenty percent of death sentences have led to executions.

As of January 1, 2010, 43 individuals have been executed in the modern era (1977–) in North Carolina, and 158 sit on death row. In all, since 1977, 388 individuals have been sentenced to death. Table 1 shows the gender and racial characteristics of these 388 men and women as well as the final disposition of their cases. Data come from official NC Department of Corrections records as posted on their website.<sup>1</sup>

Table 1. Disposition of Death Row Cases in North Carolina, 1977–2009.

Disposition	Male	Female	White	Black	Other	Total
Ever Sentenced to Death	376	12	172	189	27	388
Currently Serving on Death Row	153	4	61	85	12	158
Removed to Jail Pending Outcome of New Trial	12	0	4	5	3	12
Subtotal: Final Decisions Made	210	8	107	99	12	218
Of these cases with decisions made:						
Sentence Commuted by Governor	5	0	0	4	1	5
Found Not Guilty in Subsequent Trial	5	0	3	2	0	5
Resentenced to a Sentence less than Life	10	0	4	5	1	10
Resentenced to Life in Prison	123	7	59	65	6	130
Resentenced to Death at Second Trial*	3	0	2	1	0	3
Died in Prison of Natural Causes	19	0	9	8	2	19
Suicide in Prison	6	0	5	1	0	6
Executed	42	1	27	14	2	43

\*The Department of Corrections site lists only three individuals as having received a second death sentence. However, this may not be fully accurate. I do not analyze these cases below because informal discussions with those in the death penalty community suggest that there are more cases than those listed, but I do not know what the true number is.

<sup>1</sup> Source for inmates currently on death row:

<http://www.doc.state.nc.us/dop/deathpenalty/deathrow.htm>. Source for inmates removed from death row: <http://www.doc.state.nc.us/dop/deathpenalty/removed.htm>. Both were downloaded in January 2010 and when combined reflect information on every inmate sentenced to death from 1977 through 2009.

## Calculating Rates of Reversal of Death Sentences

After a sentence of death, appeals continue and new trials are often ordered on the basis of appellate findings of flaws in the original trials of guilt or the separate penalty phase. Of the 388 inmates who have been sentenced to death in North Carolina, 158 remain on death row and 12 await new trials. (These 12 individuals may or may not return to death row depending on the results of their pending trials.) That leaves 218 cases where final decisions have been made. Of this group, Table 1 shows that 43 have been executed, 25 have died in prison (either by suicide or natural causes), and that the vast majority have had their sentences reduced. In fact, five were later found not guilty in their subsequent trial. Table 2 presents these cases as a percentage of the 218 cases in which final judicial dispositions have been made.

Table 2. Dispositions as a Percent of Disposed Cases

Disposition	Male	Female	White	Black	Other	Total
Sentence Commuted by Governor	2	0	0	4	8	2
Found Not Guilty in Subsequent Trial	2	0	3	2	0	2
Resentenced to a Sentence less than Life	5	0	4	5	8	5
Resentenced to Life in Prison	59	88	55	66	50	60
Died in Prison of Natural Causes	9	0	8	8	17	9
Suicide in Prison	3	0	5	1	0	3
Executed	20	12	25	14	17	20
Total %	100	100	100	100	100	100
Total Cases Finally Disposed from Table 1	210	8	107	99	12	218
Rate of Death Penalty Reversals	66	88	62	73	58	67

Note: Reversals are when the second trial leads to innocence or a penalty of less than death.

So far in the history of the modern use of the death penalty in North Carolina, and not counting those cases where the inmates remain on death row and we cannot therefore assess what the final outcome of their appeals may be, execution follows a death sentence only 20 percent of the time. By far the most likely outcome of a death sentence is a subsequent trial ending in a sentence of life in prison.

The largest study reporting on rates at which death sentences are overturned, conducted by James Liebman, Jeffrey Fagan, and Valerie West and covering 23 years of data in all available states, found a rate of 68 percent of reversal.<sup>2</sup> This is virtually identical to what is found here: Those subsequently found not guilty or resentenced to a penalty of life or less than life in prison, from Table 2, comprise 67 percent of the total cases.

A recent study by Phil Cook reviewing the cost of the death penalty in North Carolina suggested that the state could save \$11 million per year by doing away with the punishment.<sup>3</sup> Recognizing that just 20 percent of those sentenced to death are likely to be executed helps explain why the

<sup>2</sup> James S. Liebman, Jeffrey Fagan, and Valerie West, *Error Rates in Capital Cases, 1973–1995*. Columbia University Law School, June 12, 2000. Available from: [http://www2.law.columbia.edu/instructionalservices/liebman/liebman\\_final.pdf](http://www2.law.columbia.edu/instructionalservices/liebman/liebman_final.pdf).

<sup>3</sup> Philip J. Cook, *Potential Savings from Abolition of the Death Penalty in North Carolina*. *American Law and Economics Review* 10 (December 11, 2009): 1–32.

system is so expensive. Capital trials are of course much more expensive than non-capital trials because they last longer, they include an entirely separate penalty phase, and greater resources are provided for the defense. The fact that the vast bulk of these trials are eventually overturned should give pause not only about the reliability of the process, but about its wastefulness as well. The process is wasteful in another way as well: it leads the family members of the victims of murders with a false assurance that closure will come. But if the vast majority of death sentences are in fact overturned, this would seem to produce needless torment. Prosecutors, judges, and other professionals involved in the process are aware of the general fact that most death sentences are eventually overturned, but family members are not likely to know this. They are in fact misled by the false assumption that any initial sentence of death is likely to be carried out; statistics show that in fact it is quite unlikely. It is hard to know what a family member might prefer in the case of their loved one's murder. But few would likely be happy with a process that leads to an initial death sentence, then its reversal.

Why are rates of reversal so high? Because substantial procedural errors plague highly emotional capital trials. Cases are not reversed and inmates guilty of vicious crimes do not find themselves sentenced to lesser penalty because of trivial errors or slight imperfections in their initial trials. Only substantial errors can cause a reversal, but these are found in approximately 67 percent of all the cases over the past 30 years in this state. We all know that no government institutions are perfect, but this rate of error, quite typical of the national average, is shocking indeed.

### Reversal Rates Pre and Post 1996

Since the Leibman study was published in 2000, some have wondered whether rates of reversal might be lower after the passage of the Antiterrorism and Effective Death Penalty Act (AEDPA, 1996), which imposed time limits and other restrictions on habeas procedures for those on death row. Therefore, it is useful to compare the disposition of inmates having entered death row before and after April 1, 1996. Table 3 does this.

Table 3. Disposition of Death Row Cases in North Carolina, 1977–2009.

Disposition	Date of Entry to Death Row Compared to April 1, 1996				Total
	Before		After		
	N	%*	N	%*	
Ever Sentenced to Death	242		146		388
Currently Serving on Death Row	60		98		158
Removed to Jail Pending Outcome of New Trial	4		8		12
Subtotal: Final Decisions Made	178		40		218
Of these cases with decisions made:					
Sentence Commuted by Governor	5	3	0	0	5
Found Not Guilty in Subsequent Trial	3	2	2	5	5
Resentenced to a Sentence less than Life	6	3	4	10	10
Resentenced to Life in Prison	103	58	27	68	130
Died in Prison of Natural Causes	15	8	4	10	19
Suicide in Prison	5	3	1	3	6
Executed	41	23	2	5	43
Overall Reversal Rate	112	63	33	83	43

\*Percentages are on the basis of those for whom final decisions have been made.

Table 2 showed the overall reversal rate to be 67 percent. For those sentenced to death after April 1, 1996, there is no movement toward a lower rate of reversal. It is important to note that only 40 cases out of 146 have reached a final disposition; it is possible that many of the 106 for whom a final disposition has not yet been reached will be executed. However, for those 40 where we can compare the rate of reversal with knowledge of the final outcome, the percentage of reversal is 83, as compared to 63 for those who were sentenced since before the implementation of the AEDPA in 1996.

### Amount of Time on Death Row

Table 4 shows the period of time inmates have spent on death row. One inmate committed suicide after just 19 days on death row in 1977. Most serve considerably longer periods, including those who are eventually exonerated (7 years on average), who have their sentence commuted by the governor (8 years), or who receive a sentence less than death after a subsequent trial (5 years). Those executed range from 2 years 7 months to over 22 years on the row, with an average period of over ten years. Those currently serving have served an average of almost 9 years, with a range up to 24 years. Norris Taylor died in on death row in 2006 at the age of 61 after spending over 26 years on death row.

Table 4. Time Spent on Death Row in North Carolina.

Disposition	Number of Inmates	Years on Death Row		
		Mean	Min	Max
Ever Sentenced to Death	388	8.80	0.05	26.52
Currently Serving on Death Row	158	11.85	0.67	24.32
Removed to Jail Pending Outcome of New Trial	12	6.84	1.48	16.09
Sentence Commuted by Governor	5	8.03	1.63	10.62
Found Not Guilty in Subsequent Trial	5	7.06	1.51	13.39
Resentenced to a Sentence less than Life	10	5.42	1.90	11.78
Resentenced to Life in Prison	130	5.15	0.98	25.93
Died in Prison of Natural Causes	19	9.42	2.92	26.52
Suicide in Prison	6	3.88	0.05	11.17
Executed	43	10.64	2.59	22.45

Years on death row is calculated from December 12, 2009.

This brief analysis has shown extremely high levels of reversals of death sentences in North Carolina across the modern period. Since enactment of the AEDPA in 1996 there has been no trend toward fewer reversals. Execution follows a death sentence only 20 percent of the time. Those who have been found not guilty served an average of over 7 years on death row, and those whose sentences have been reversed have served an average of over 5 years. When executions do occur, they typically are more than a decade after the initial death sentence.

## Reliability as a Standard

A simple standard of accuracy in any decision-making system is whether the same result is reached twice, given the same facts. If a system is extremely reliable, it always reaches the same outcome given the same information. By this standard, we can see that North Carolina's death penalty system is extremely unreliable. It does not seem likely that there are only three individuals who have been resentenced to death at their second trial, as the Department of Corrections web site lists. If that were true, then we could calculate the "reliability" of the system as 3 of 143, or just over two percent. (The calculation would be as follows: of all those who have been re-tried, 3 have been sentenced to death at the second trial, while 5 have been found not guilty and 135 have been sentenced to a lesser penalty in the subsequent trial. So 3 of 143 total cases is 2 percent.) But we have reason to suspect that the information on two-death-sentences cases is underreported by the DOC. If we use a more relaxed but probably more accurate standard, the rate could be calculated as 33 percent. This is calculated as follows: cases where the inmate was finally executed, died in prison, or had their sentenced commuted by the governor represent 73 of 218 cases where a final decision has been reached. In those cases, we can say at least that the sentence of death was never overturned by any subsequent legal process. (Note, however, that only 43 of these 218 cases actually led to execution.) By contrast, 145, or 67 percent, resulted in a sentence of less than death at the second trial. So, no matter how we calculate the reliability of the death penalty system, we can see that it is extremely unreliable. Executions follow an initial sentence of death only 20 percent of the time. Much more likely is a subsequent decision to impose a lesser sentence, usually after years of delay.