

A Statistical Evaluation of the United States' Death Penalty System Through the Lens of Equal
Protection Under the Law

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Introduction

The constitutionality of the death penalty has been called into question numerous times. Most commonly, scholars look to the Eighth and Fourteen Amendments when examining the legality of this practice. The Eighth Amendment states that cruel and unusual punishment shall not be inflicted and the Fourteenth Amendment guarantees equal protection under the law. This thesis will explore the usage of the death penalty in several states through the lens of the Fourteenth Amendment to see whether these states are in compliance with the Constitution's guarantee that all citizens will receive equal protection under their law, and in this case, under the states' death penalty statutes.

The thesis will examine three areas where potential disparity in sentencing patterns may arise: changing usage over time, different rates of usage for counties within a state, and sentencing patterns based on the race and gender of the offender and victim. First, we will see whether these disparities arise when we sum all of the death sentences in the nation as a whole and then we will examine whether these patterns are consistent for individual states.

Literature Review

History of the Death Penalty

No other nation influenced the American death penalty system more than Great Britain. English colonists came from a country where death was the penalty for a slew of crimes including treason, murder, manslaughter, rape, robbery, burglary, arson, counterfeiting, and theft. In the seventeenth and eighteenth century there was still a consensus that murder was the most heinous crime, however, there was no hierarchy in the punishment for these crimes—death was the imposed punishment for all, although, even then, the punishment was not always enforced (Banner, 2009, p. 5-6).

The first recorded execution in the United States took place in 1608. Capital statutes varied greatly by state, thus the road to abolition of the death penalty has been patchy. Pennsylvania restricted the death penalty to only cases of first-degree murder in 1794 and in 1834 became the first state to do away with public executions (Costanzo & White, 1994). In 1846, Michigan became the first state to abolish the death penalty for all crimes except treason (“The Abolitionist Movement,” 2021). Rhode Island and Wisconsin became the first two states to completely abolish the death penalty for all crimes in 1852 and 1853, respectively (Costanzo & White, 1994).

Throughout the years, states have abolished capital punishment only to reinstate their death penalty statute years later. The first half of the twentieth century was a progression period in death penalty reform, as from 1907 to 1917, six states completely abolished the death penalty and three states narrowed their statutes such that only treason and first-degree murder were capital eligible. This reform was ultimately overturned; five out of the six abolitionist states had reinstated their capital system by 1920. The death penalty system gained momentum from the 1920s through the 1940s, with the most executions per decade being the 1930s, averaging 167 people executed each year. However, beginning in the 1950s, the use of the death penalty declined, a trend that has continued relatively constantly to this day (“The Abolitionist Movement,” 2021).

Public support for the death penalty reached an all-time low in 1966 with 42% of the public supporting capital punishment in the United States. The discontent with America’s capital system gave rise to the landmark Supreme Court case of *Furman v. Georgia* in 1972 (Wright, 2016).

Racist Undertones of the Death Penalty System

The death penalty descends directly from lynching and remains a form of racial violence. Until the Civil War, criminal law in some states assigned different punishments to the same crimes based on whether the convicted was black or white. In Georgia, for example, the rape of a white female by a black male was punishable by death, whereas the rape of a white female by a white male was punishable by a prison term of two to twenty years (Bright, 1995). In the early twentieth century when the system of disparate sentencing had been subdued, but rape remained death eligible, 89 percent of those sentenced to death were black males with white female victims (“Race,” 2020).

In addition to this unequal sentencing, blacks were victims of lynching. At least 4,743 people were killed in lynch mobs, ninety percent of which took place in the South, and three quarters of the victims were black. Southern states’ fear that Congress could pass an anti-lynching statute forced them to turn from lynching performed by the public to executions performed by the state. These executions came to be known as “legal lynching” (Bright, 1995). By 1915, executions outnumbered lynchings (“Death Penalty,” 2021).

The transition from lynching to court sponsored racial violence took hold with extra fervor in the state of Georgia. From 1924 to 1972, the state executed 337 blacks and 75 whites, making nearly 82% of executions black (Bright, 1975). This is relatively on par with the rest of the South, as 75 percent of all people executed in the region were black (“Death Penalty,” 2021.) Given that this national lean into capital punishment came right from the need to enforce racial violence, it is more than a relic of past lynchings, but a modern hand in state sanctioned racial oppression.

Furman v. Georgia

In the Supreme Court case of *Furman v. Georgia* (1972), the Court examined whether imposing and carrying out the death penalty violated the Eighth Amendment’s ban of cruel and unusual

punishment. The three petitioners in the case were each sentenced to death in their respective states for various crimes: Furman was convicted of murder in Georgia, Jackson was convicted of rape in Georgia, and Branch was convicted of rape in Texas (“Furman v. Georgia (1972)”, 2020).

The Court ruled that the death penalty was unconstitutional, as it was applied in an arbitrary and discriminatory fashion. Each justice wrote his own opinion, each highlighting a different facet of the capital system’s arbitrariness, ranging from the targeting of racial minorities, to the failure to reserve the worst punishment for the worst criminals, to the infrequency of the death penalty’s application. Justices Brennan and Marshall were the only two to go so far as to say that the death penalty was unconstitutional in all circumstances (Mandery, 2016).

This decision nullified all of the nation’s death penalty statutes and those on death row saw their sentences commuted to life in prison, while others were even suddenly eligible for parole (Baumgartner et al., 2017, p. 6). However, this was far from the end of America’s death penalty system. From 1972 to 1976, 35 states rewrote their death penalty statutes to correct the systematic flaws highlighted by the *Furman* (1972) ruling. Seven states mandated capital punishment for those convicted of first-degree murder. Other states attempted to limit arbitrariness by introducing the bifurcated trial, evaluating first guilt/innocence and then moving on to sentencing, requiring jurors to find aggravating factors, and by guaranteeing appellate review of all death sentences (Mandery, 2016).

Gregg v. Georgia

The death penalty was reinstated four years later with the ruling in *Gregg v. Georgia* (1976).

Troy Gregg had been found guilty of murder and armed robbery and was sentenced to death. The defendant asked that the Supreme Court declare the death penalty to be in and of itself

unconstitutional. The Court refused and instead decided that the state of Georgia's new system for imposing the death penalty, a bifurcated trial first to determine guilt and another for sentencing and the necessary finding of aggravating circumstances to impose death, had removed the cruel and unusual nature of the state's previous system under which the death penalty had been declared unconstitutional ("Gregg v. Georgia").

This ruling not only declared the death penalty to no longer be a violation of the Eighth Amendment, it also approved of three procedural reforms. First, as mentioned, the bifurcated trial was implemented. In the first phase of the trial the jury deliberates the question of the defendant's guilt. If the defendant is found guilty, the trial moves on to the second phase for sentencing. In this phase the jury evaluates whether the defendant shall be sentenced to death or given a lesser sentence. The second procedural reform is automatic appellate review for all death penalty convictions. And the final procedural reform that stemmed from *Gregg* was proportionality review. Proportionality review allows appellate courts to compare sentences in the case to other cases within the state to see if death is the appropriate punishment ("Reinstating the Death Penalty").

Proportionality Issues in the Modern System

The Supreme Court first explored the nuance in death penalty sentencing when it struck down the North Carolina death penalty statute that mandated the death penalty for everyone convicted of first-degree or felony murder in *Woodson v. North Carolina* (1976). Although the statute was imposed in an attempt to eliminate inconsistencies in sentencing, the Court felt that it did not allow for the necessary particularized considerations for individual cases, which is a constitutionally indispensable component of the judicial process in imposing the death penalty (Kaufman-Osborn, 2008).

Proportionality review is in place to ensure that only the most heinous and deserving criminals receive death. However, Baumgartner and Dietrich (2015) found that out of the 8,466 inmates sentenced to death between 1973 and 2013, 3,194 had their sentences overturned or commuted and only 1,359 were actually executed. Merely 16% of those sentenced to death ultimately received the death penalty, which demonstrates that we are over sentencing or under executing, since if courts were sentencing proportionally all would result in an eventual execution (Baumgartner et al., 2017, p. 139).

Racial disparity has been highlighted through Baldus-type studies, which analyze aggregate data from death eligible crimes and seeing which resulted in a capital prosecution or death sentence. The Supreme Court did not see such statistical disparity as unconstitutional in the *McCleskey v. Kemp* (1987) ruling, essentially shutting down a future of serious proportionality review. Despite the statistically significant gap in sentencing linked to the race of the victim and offender, the Court ruled that these patterns were irrelevant and inevitable (Baumgartner et al., 2017, p. 80-81).

Regardless of the Court's denial to acknowledge the weight of these patterns, they are still glaringly apparent. Homicides tend to occur among young men of the same race, with black men being the most common offenders and victims. Those that kill black men, however, rarely receive the death penalty. Those that kill women and white people are far more likely to be sentenced to death. Specifically, a black man that kills a white woman is ten times more likely to face death than a black man that kills another black man (Baumgartner et al., 2017, p. 84-85).

The Fourteenth Amendment

Section 1 of the Fourteenth Amendment states "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws” (U.S. Constitution, amend. 14, § 1). This equal protection under the law, in theory, should result in relatively equal sentencing regardless of race, gender, geographic location within each state, and over time. Despite this constitutional guarantee, we see that sentencing rates fluctuate greatly over each of these four categories.

The Modern Death Penalty System

Currently, 27 states, the federal government, and the military, still authorize capital punishment.

As of 2019, there were 2,570 people on death row across the country (Gramlich, 2021). New Mexico in 2009, Illinois in 2011, Connecticut in 2012, Maryland in 2013, New Hampshire in 2019, Colorado in 2020, and Virginia in 2021 legislatively abolished the death penalty and replaced it with life in prison without the possibility of parole. State courts in Washington and Delaware ruled that their death penalty statutes were unconstitutional, thus doing away with their current systems as well (“States and Capital Punishment,” 2021). Even in states where statutes remain, it is rare for executions to be carried out. Thirteen states have not carried out an execution in over a decade and formal moratoriums on executions are in place in California, Oregon, and Pennsylvania (Gramlich, 2021). This ultimately brings into question why many states continue to uphold such a system, determining who they choose to execute, and if the guidelines for constitutionality, as established by *Gregg v. Georgia* (1976) ruling, are being followed.

Research Design

Hypotheses

In order to evaluate whether the modern death penalty is upholding the requirements set by the Supreme Court ruling of *Gregg v. Georgia*, specifically the Fourteenth Amendment promise of equal protection under the law, the following sections will provide a statistical analysis of three

particular facets of death rows including temporal disparity, geographic disparity, and race and gender disparity. The modern death penalty system should uphold the constitutional guarantee of equal protection under the law as outlined in the Fourteenth Amendment. I hypothesize that the death penalty is being carried out in conformance with the law, meaning it is equitable and proportionate. A death penalty that is carried out constitutionally will conform to my hypothesis in three ways. First, there will be no change in the number of annual sentences over time. Second, there will be equal rate of usage per one hundred homicides within counties within a state. Lastly, demographic factors will play no role in the likelihood of receiving a death sentence. Significant deviation on any of these grounds would point to a death penalty system used unconstitutionally.

Methodology

Using data from the FBI homicide reports and the CDC, I will conduct a statistical overview of death penalty sentencing and executions in the nation as a whole, and as data allows, I will examine patterns in death sentences for the race and gender of offenders and victims. This more complete race and gender data exists for the states of Mississippi, Tennessee, Texas, South Carolina, and Indiana, all of which still have death penalty statutes in place. I will analyze the annual number of death sentences and executions, the sentencing rate per 100 homicides per county, the number of death sentences per county, and the rate of 100 homicides as dependent on the race and gender of the offender and victim.

The following sections will examine the three prongs of my hypothesis examining temporal disparity, geographic disparity, and race and gender disparity. First, I will look into these patterns in the United States, totaling the death sentences across states and looking at race and gender data for only cases resulting in executions. Next, I will examine death sentences in six other states, looking at each state individually. As each state has its own death penalty statute,

analysis on the constitutionality of its practice can only be done internally; rates between states cannot be compared, as they are influenced by the states' unique statute.

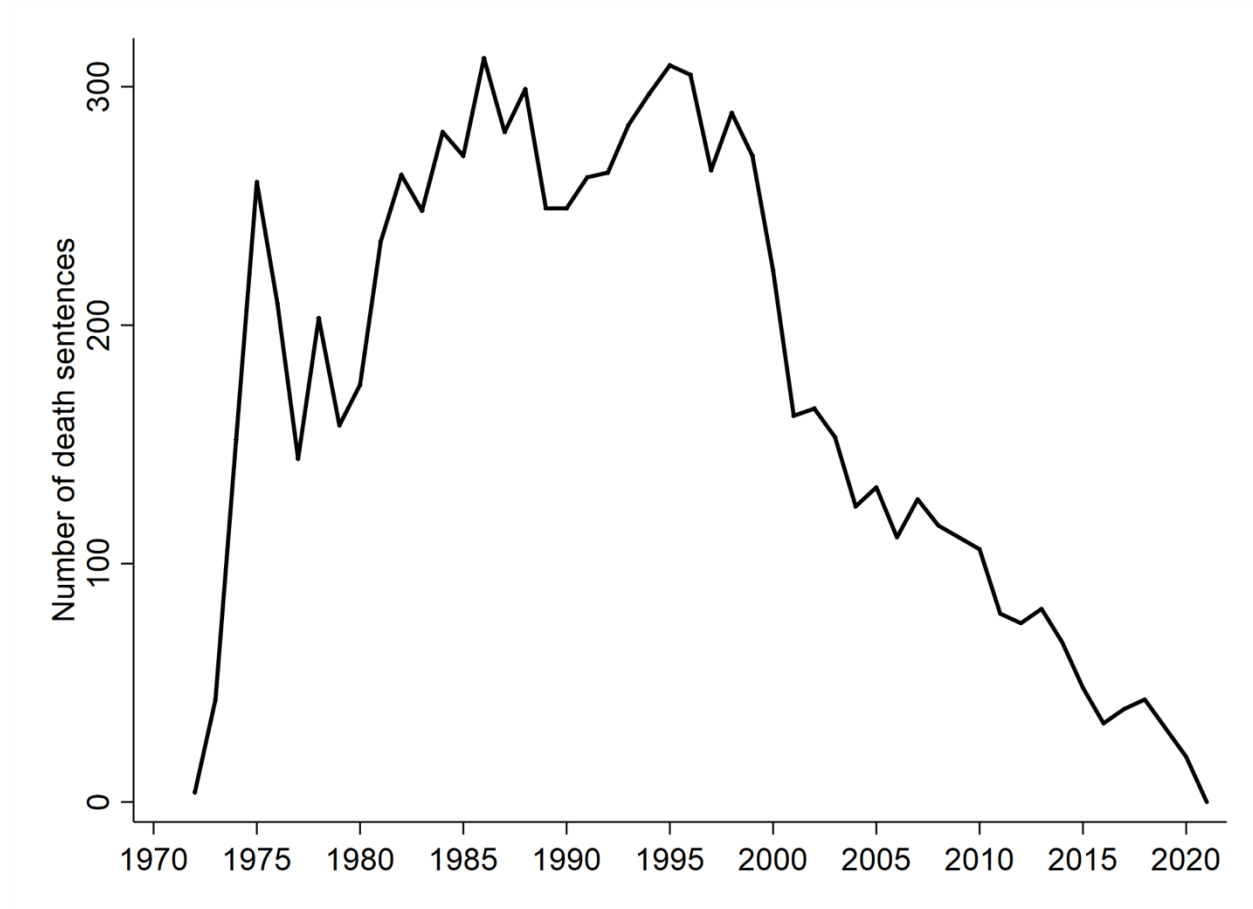
Data Analysis

United States

Declining Usage Over Time

Since the Supreme Court ruling in *Gregg v. Georgia* that reinstated the death penalty on the national level in 1976, 5,517 individuals have been sentenced to death. This is a rate of 122.6 individuals per year. Figure 1 highlights the trends in the number of death sentences given out per year throughout the entire country. The number of death sentences peaked in 1986 with 312 sentences and remained consistently high, with over 200 individuals sentenced to death per year, from 1981 to 2000. Since the turn of the twenty-first century, however, we see a continuous decrease in the number of annual death sentences.

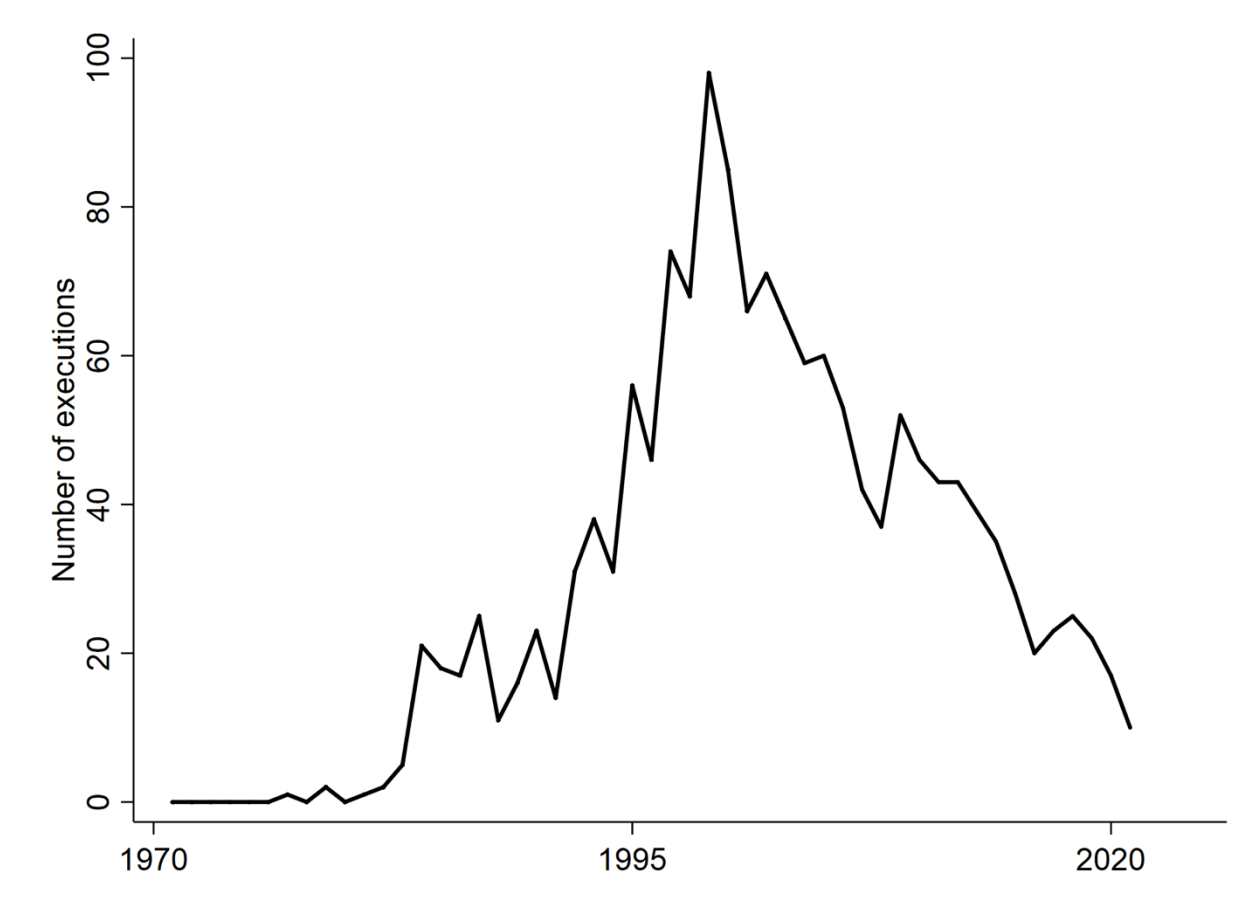
Figure 1. Death sentences in the modern era



Few executions carried out annually

Few individuals are sentenced to death annually and even fewer individuals are actually ever executed. Although sentencing rates picked up rather rapidly, especially at the start of the 1980s, we do not see a substantial number of executions being carried out. The number of annual executions peaked in 1998, with 98 executions, and the number has not come close to that peak since. Figure 2 highlights the staunch and uncharacteristic peak in executions that has been followed by few annual executions in the last two decades.

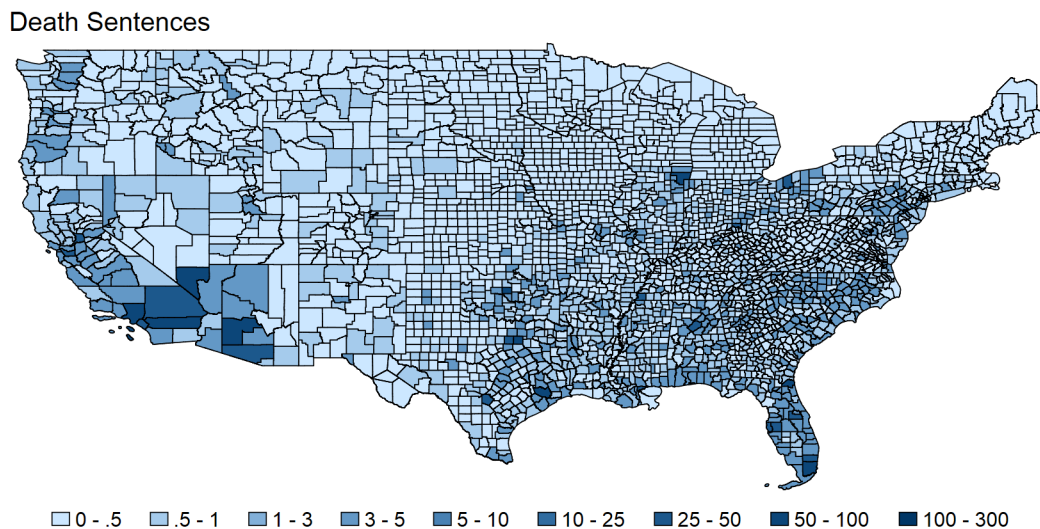
Figure 2. Executions in the modern era



Low number of death sentences nationally

Figure 3 shows a map of the United States divided by county and shaded by the number of total death sentences imposed in the 45-year period that the modern system of capital sentencing has existed. This map clearly demonstrates that the gross majority of the counties in the nation have given out very few, if any, death sentences. We see small spots of dark blue, indicating unusually high number of death sentences, in cities such as Miami, Chicago, and Houston. Additionally, we see high numbers of death sentences in California and Arizona. Overall, however, we see that most of the nation remains barren of death sentences.

Figure 3. Death sentences per county



Race and Gender Disparities

Since the death penalty was reinstated on a state-by-state basis, the nation has executed 1,538 individuals. We have complete data for the race and gender of both victims and offenders in cases resulting in executions, so we will examine those cases throughout the entire nation. In six states, however, we have complete race and gender data for all of the cases that resulted in a death sentence, so where that data is complete, we will examine patterns in death sentences too.

The table first shows the race and gender of the offenders, then those same characteristics for the victims, and finally the different victim-offender combinations. The table highlights the number of homicides, death sentences, and executions that fall into each group. The last column is execution rates, which is the number of offenders, per 100 homicides, sentenced to death and executed, respectively. The first row looks purely at the number of homicides. There are 82,832 homicide offenders and 1109 of which received a death sentence, thus making the rate at those sentenced 1.34% of all homicide offenders.

Comparing rates within each grouping is where the true significance of the data lays. If sentencing is unaffected by race and gender, we would see similar rates with slight variation

caused by random error. Unfortunately, this is not the case and we see huge sentencing differences based on the race and gender of both the victim and the offender.

For offender gender, seventeen (1.1%) were female and 1,520 (98.8%) were male. For offender race, 528 (34.3%) were black and 860 (55.9%) were white. Considering that in 1970 only 11.1% of the United States' population was black and in 2020, only 12.3% of the population is black, black individuals throughout the nation are being executed at a disproportionate rate.

Table 1 compares the over 700,000 homicides reported by the FBI while the death penalty was legal, based on when capital punishment was, if at all, reinstated, and in some cases, subsequently abolished again, with the over 1,500 executions that occurred. The table first shows the race and sex of the offenders, then those same characteristics for the victims, and finally the different victim-offender combinations. The table highlights the number of homicides and subsequent executions that fall into each group. The last column is the execution rates, which is the number of offenders, per 100 homicides, executed. The first column looks purely at the number of homicides. The rate of executions per 100 homicides is 0.215 before we add in the variation that is caused by both the race and gender of offender and victim.

Table 1. Rate of executions per 100 homicides for victim and offender race and gender

| | Homicides | Homicides While Death Penalty is Legal | Executions | Rate of Executions per 100 Homicides |
|---------------------------|------------------|---|-------------------|---|
| Total by Offenders | 829,305 | 714,076 | 1,538 | 0.22 |
| By Offender Gender | | | | |
| Female | 68,920 | 59,964 | 17 | 0.03 |
| Male | 537,369 | 466,507 | 1,520 | 0.33 |
| By Offender Race | | | | |
| Black | 298,969 | 255,344 | 528 | 0.21 |

| | | | | |
|---|---------|---------|-------|------|
| White | 224,026 | 194,951 | 860 | 0.44 |
| Total by Victims | 874,016 | 752,377 | 2,402 | 0.32 |
| By Victim Gender | | | | |
| Male | 688,369 | 593,198 | 1,227 | 0.21 |
| Female | 184,337 | 158,056 | 1,175 | 0.74 |
| By Victim Race | | | | |
| Black | 410,171 | 341,945 | 375 | 0.11 |
| White | 337,670 | 294,489 | 1,804 | 0.61 |
| By Victim Race and Gender | | | | |
| Black Male | 342,688 | 284,441 | 196 | 0.07 |
| Black Female | 67,417 | 57,449 | 180 | 0.31 |
| White Male | 240,480 | 211,358 | 889 | 0.42 |
| White Female | 97,111 | 83,070 | 916 | 1.10 |
| By Offender-Victim Race Combinations | | | | |
| Black kills Black | 245,856 | 209,403 | 183 | 0.09 |
| White kills Black | 19,685 | 17,027 | 23 | 0.14 |
| White kills White | 193,103 | 168,037 | 807 | 0.48 |
| Black kills White | 41,628 | 35,805 | 312 | 0.87 |
| Black male kills White female | 9,684 | 8,250 | 160 | 1.94 |

Figure 4 summarizes the differences in the rate of execution as it varies based on the race and gender of the victim and offender. Firstly, the rate of a capital case resulting in an execution in the country as a whole is 0.22 out of every 100 homicides. Examining next offender gender, we see that male offenders are executed at a rate of 0.33, whereas female offenders are executed at a rate of 0.03 executions per 100 homicides. Additionally, we see that offender race factors in, as black offenders are executed at a rate of 0.21 and white offenders are executed at a rate of 0.44. It may seem counterintuitive that white offenders are executed at a higher rate, but this is because homicides tend to occur within racial lines, thus white offenders tend to have white victims and those with white victims are executed at higher rates.

The race and gender of the victim, however, yields even more significance, with higher rate fluctuations. An offender with a male victim is executed with a rate of 0.21, but an offender with a female victim is executed at a rate of 0.74. Furthermore, an offender with a black victim is executed at a rate of 0.11, while an offender with a white victim is executed at a rate of 0.61.

Executions rates between groups get even more drastic when we look at race and gender together. An offender with a black male victim is executed at a rate of 0.07 while an offender with a white female victim is executed at a rate of 1.10. The highest rate of execution occurs when there is a black male offender with a white female victim, those offenders are executed at a rate of 1.94.

Figure 4. Rate of executions by race and gender of offender and victim

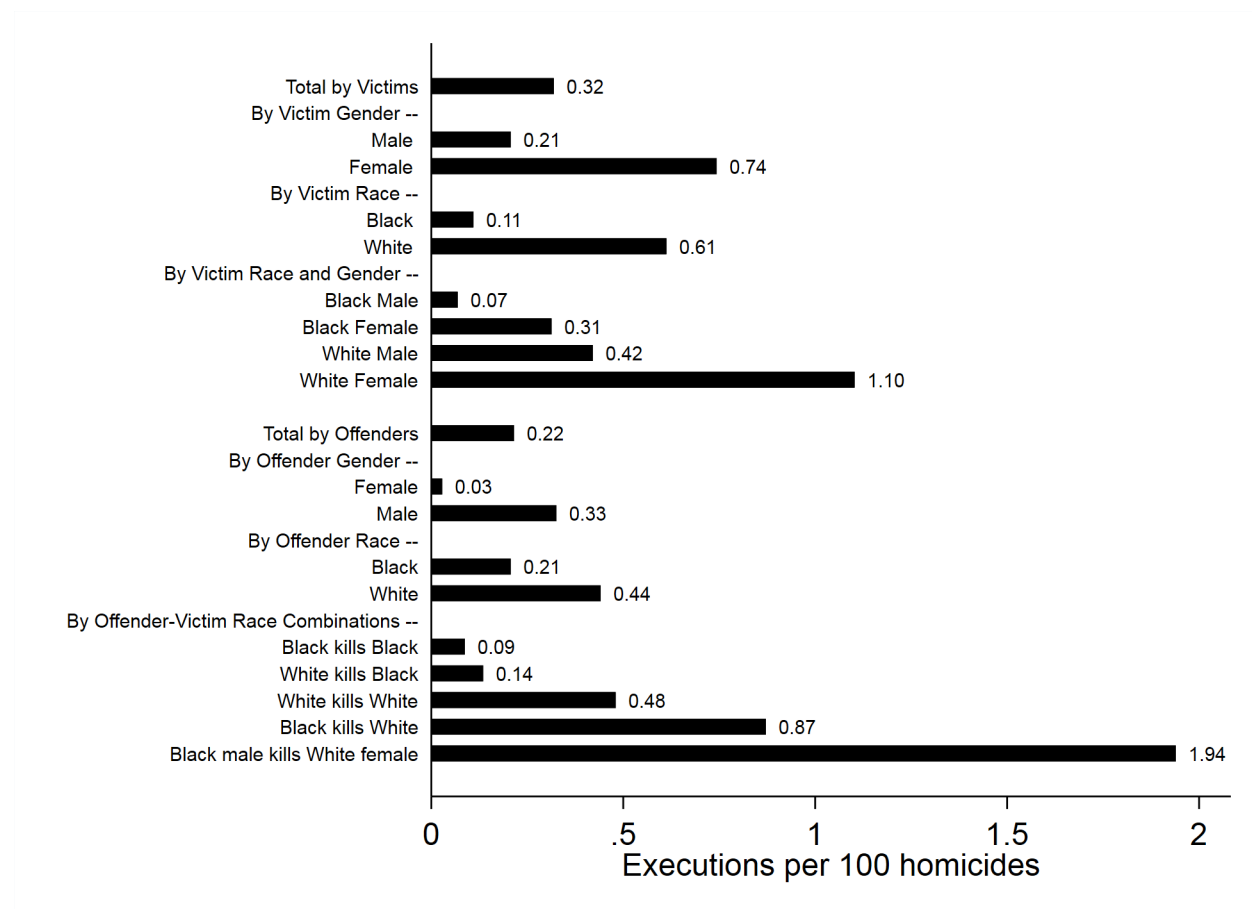
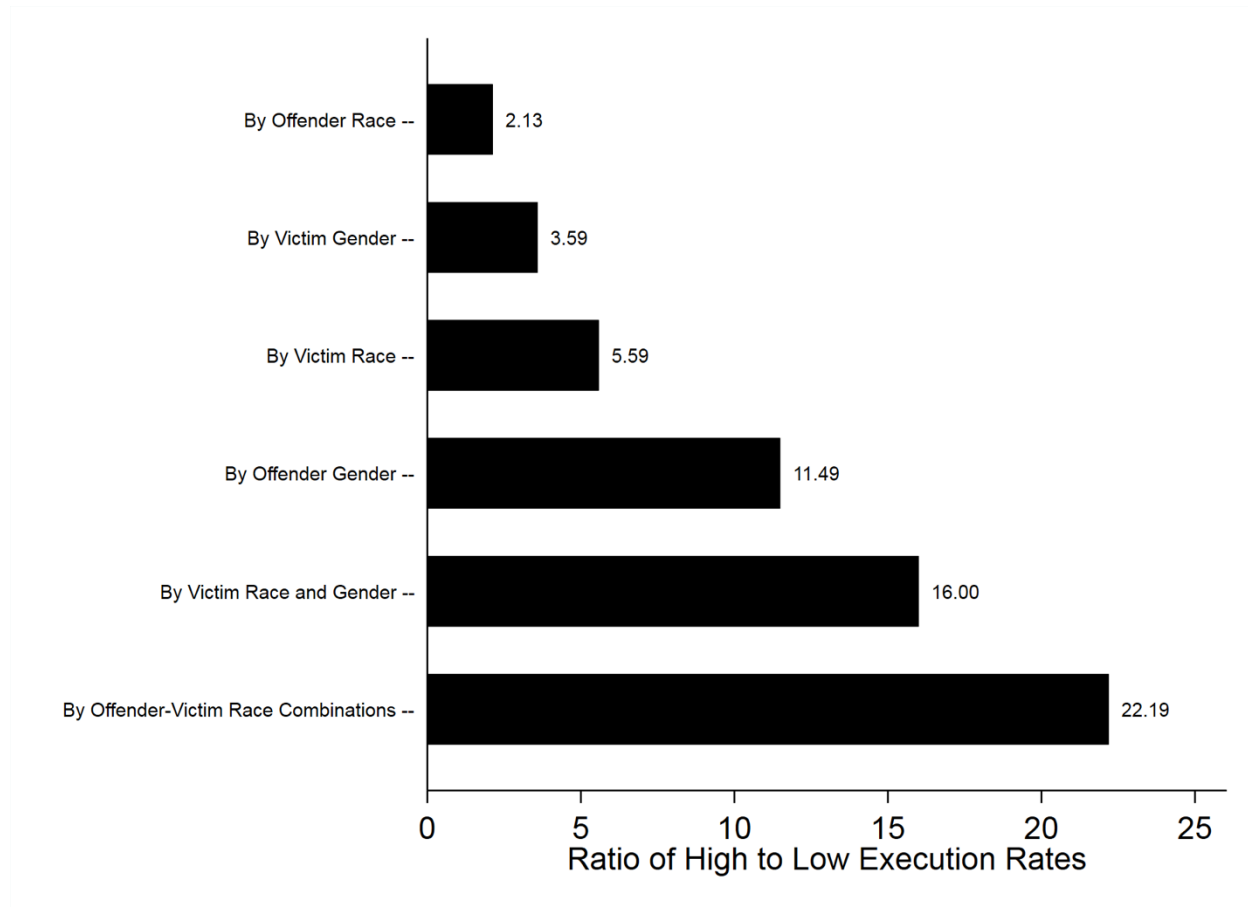


Figure 5 ranks the factors from lowest to highest in their likelihood of resulting in an execution. We see that white offenders are 2.13 times more likely to be executed than black offenders. Offender race seems to have the lowest statistical impact out of the demographics examined. Next, we see that those with female victims are 3.59 times as likely to be executed than those with male victims. Additionally, we see those with white victims are 5.59 times as likely to be executed than those with black victims. Male offenders are 11.49 times more likely to be executed than female offenders.

These rates jump when we combine the race and gender of the victims. An offender with a white female victim is 16.00 times more likely than an offender with a black male victim to be executed. The highest discrepancies occur when we combine all four of these factors and find that a black male that kills a white female is 22.19 times more likely to be executed than a black male that kills another black male.

Figure 5. Execution rates compared



United States Conclusion

Figures 1 through 5 demonstrate the United States death penalty failing on all three fronts of equal protection under the law being examined in this thesis. In Figures 1 and 2, there is a high level of temporal disparity, as the number of annual death sentences and executions fluctuated greatly over the last 45 years. Equal protection under the law would ensure that roughly the same number of individuals are sentenced each year and that these sentencing patterns would not be influenced by external political movements on how best to handle and punish criminals. Additionally, the number of annual sentences would not decrease because of an evolving standard of decency that is not reflected in the laws themselves.

Figure 3 highlights geographic disparities in sentencing. As the majority of the graph is the lightest shade of blue, it is clear that most counties in the United States impose few, if any, death sentences. Equal protection under the law would make it such that each county would sentence homicide offenders to death at an equal rate out of 100 homicides. A victim's life in a large city with many homicides should not be valued less and have their killer less likely to be sentenced than a smaller county with fewer homicides.

Figures 4 and 5 demonstrate race and gender disparity in sentencing, which, again, violates equal protection under the law. If there was truly equal protection under the law, we would expect the sentencing rate per 100 homicides for each demographic to be the same. However, we find that the race and gender of the offender and victim yields very different rates of sentencing, which means that certain demographic groups are being targeted in the capital system.

The death penalty exists to punish the most heinous criminals, but instead, we find that across the United States it is actually used to punish those who committed homicides in a specific range of years, in a few counties, and had white female victims. These extraneous factors weigh in on the likelihood of someone receiving a death penalty and the rate at which they impact sentencing violates the Fourteenth Amendment.

In the following sections, we will examine whether Texas also demonstrated temporal, geographic, and demographic disparity in their capital sentencing. As the race and gender data exists for offenders and victims in Texas is also incomplete for all cases resulting in a death sentence, we will continue to examine these patterns through cases resulting in executions, as that data is complete and the state has the highest number of executions.

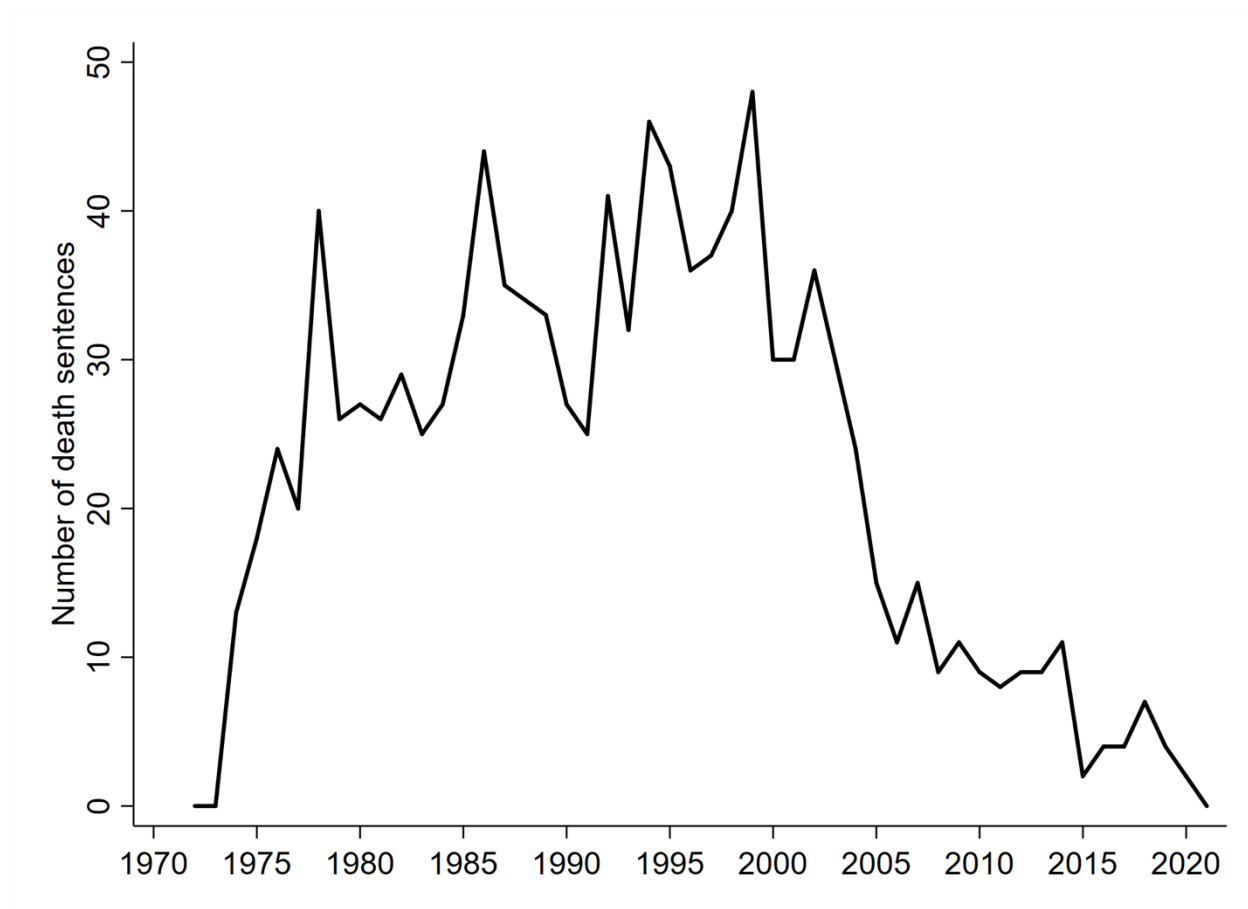
Texas

Declining Usage Over Time

Since 1974, 1109 individuals have been sentenced to death, an average of about 24 per year.

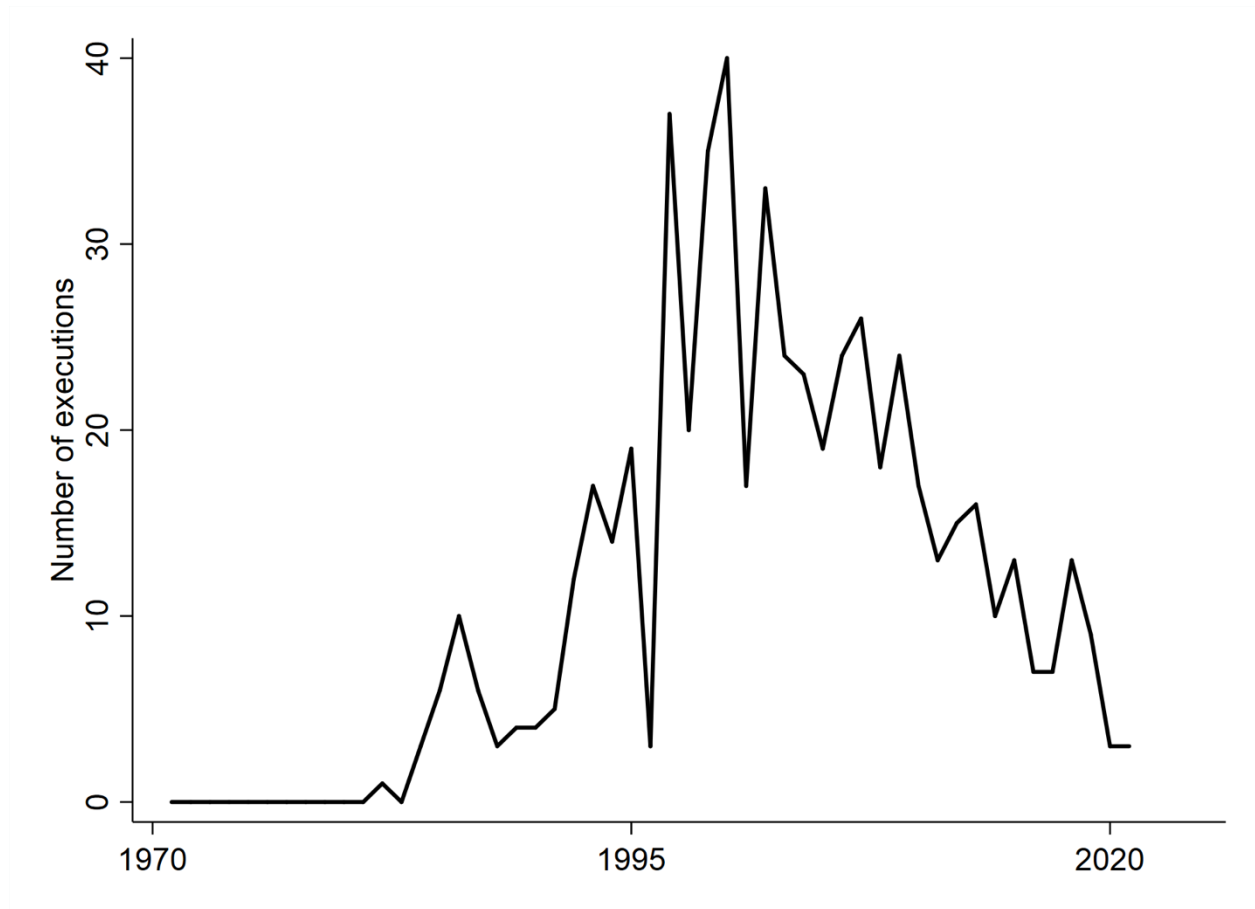
Figure 6 shows these numbers, making their peak at 49 death sentences in 1999. There has been a steady decline in the years death sentences since then.

Figure 6. Death sentences in the modern era



There has also been a decline in executions over the years. Executions peaked in 2000 with a high of 40 but have since been on the decline annually. We see this decrease in sentencing followed by a decrease in execution with a few years of lag, as sentences take years before resulting in executions, and this shows that the lack of sentencing and ultimate lack of executions also holds true.

Figure 7. Executions in the modern era



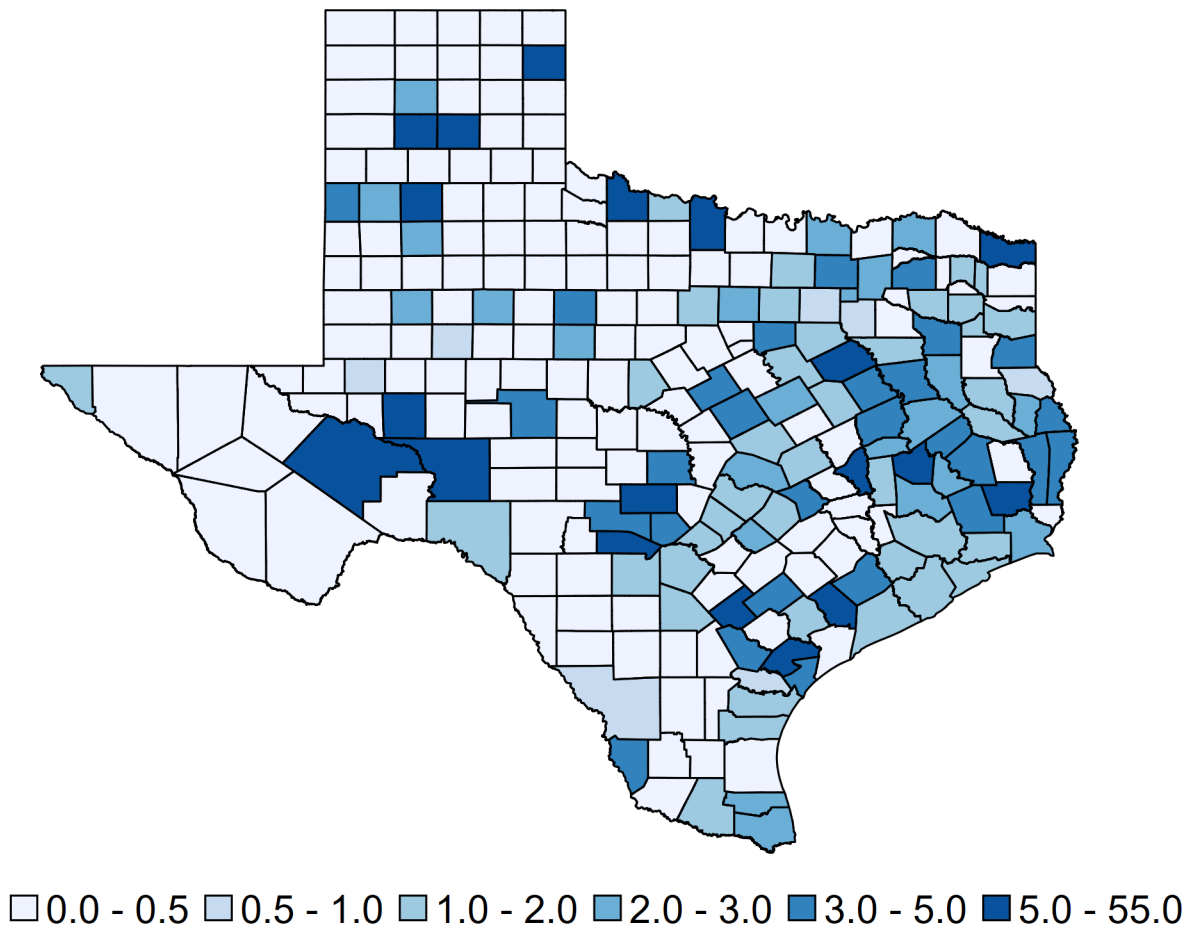
Geographic incongruence between homicide rates and death sentences

The range of death sentences per 100 homicide victims vary greatly from county to county

within the state. In Figure 8, as the counties get darker in color, they have higher sentences rates per 100 homicides. The majority of counties have less than 5 death sentences per 100 homicide victims.

Figure 8. Death sentences per 100 homicide victims

Death Sentences per 100 homicide victims



The number of death sentences vary drastically from county to county as well. The county with the most death sentences in the nation is located in Texas. Harris County has 300 death sentences; however, it has a rate of less than 3 death sentences per 100 homicides, making its rate comparatively lower than other counties in the state. We see similar patterns with Tarrant County, Dallas County, and Bexar County, which have 74, 107, and 77 death sentences, respectively. Again, these counties have high numbers of death sentences but low sentencing rates relative to the number of homicides.

Death Sentences

23

Executions

Since reinstating the death penalty in 1976, Texas has sentenced 1109 people to death. Eighteen of these offenders have been female (1.6%) and 1089 of them have male (98.4%). The racial breakdown of the sentences is as follows: there were 415 black (37.4%) offenders and 440 white (39.6 %) offenders sentenced to death. Table 2 further breaks down the disparities based on offender and victim race and gender in Texas homicides from 1975 to 2020, death sentences, and executions. Although not every homicide is capital eligible, we would still expect sentencing rates to be somewhat reflective of the population demographics. According to the 2020 census,

78.7% of the state's population is white and 12.9% is black. The disproportionate sentencing of black individuals is most likely indicative of bias in the court rather than those crimes being considered the worst of the worst.

Table 2 compares the over 82,000 homicides in the state with the 573 executions over a 45-year period. The race and gender breakdown for the offenders and victims of these crimes only exists for the sentences ultimately resulting in executions, solely for the state of Texas the analysis will cover the demographic breakdown of executions rather than death sentences. As we move through the chart, we see that sentencing and execution rate fluctuates greatly based on race and gender. Looking at offender gender, we see that female offenders are executed at a rate of 0.08, but male offenders are executed at a rate of 0.97. Additionally, black offenders are executed at a rate of 0.83, while white offenders are executed at a rate of 1.17.

The data demonstrates that rather than reserving death for the worst of the worst, the system reserves death for cases involving white female victims. The execution rate for an offender with a male victim is 0.57, but the execution rate for an offender with a female victim is 2.15. The execution rate for a black victim is 0.41, but the for a white victim the rate is 1.64. The contrast becomes even more stark when we look at these factors working in tandem. When a black male is killed, the execution rate of the offender is only 0.24, but when a white female is killed, the execution rate of the offender is 3.12. The highest execution rate, however, occurs in cases where a black male kills a white female, which has a sentencing rate of 6.42. Figure 11 further summarizes the differences in death sentencing rates in a visual capacity.

Table 2. Rate of executions per 100 homicides for victim and offender race and gender

| | Homicides | Executions | Execution Rate |
|---------------------------|------------------|-------------------|-----------------------|
| Total by Offenders | 82832 | 573 | 0.69 |
| By Offender Gender | | | |
| Female | 7411 | 6 | 0.08 |

| | | | |
|---|-------|-----|------|
| Male | 58347 | 567 | 0.97 |
| By Offender Race | | | |
| Black | 24757 | 206 | 0.83 |
| White | 21877 | 256 | 1.17 |
| Total by Victims | 87030 | 777 | 0.89 |
| By Victim Gender -- | | | |
| Male | 69304 | 398 | 0.57 |
| Female | 17602 | 379 | 2.15 |
| By Victim Race -- | | | |
| Black | 28846 | 118 | 0.41 |
| White | 31786 | 512 | 1.61 |
| By Victim Race and Gender | | | |
| Black Male | 23839 | 57 | 0.24 |
| Black Female | 5003 | 61 | 1.22 |
| White Male | 23305 | 250 | 1.07 |
| White Female | 8475 | 262 | 3.09 |
| By Offender-Victim Race Combinations | | | |
| Black kills Black | 19095 | 68 | 0.36 |
| White kills Black | 1773 | 5 | 0.28 |
| White kills White | 18141 | 233 | 1.28 |
| Black kills White | 3389 | 114 | 3.36 |
| Black male kills White female | 716 | 46 | 6.42 |

Figure 11. Rate of executions per 100 homicides for victim and offender race and gender

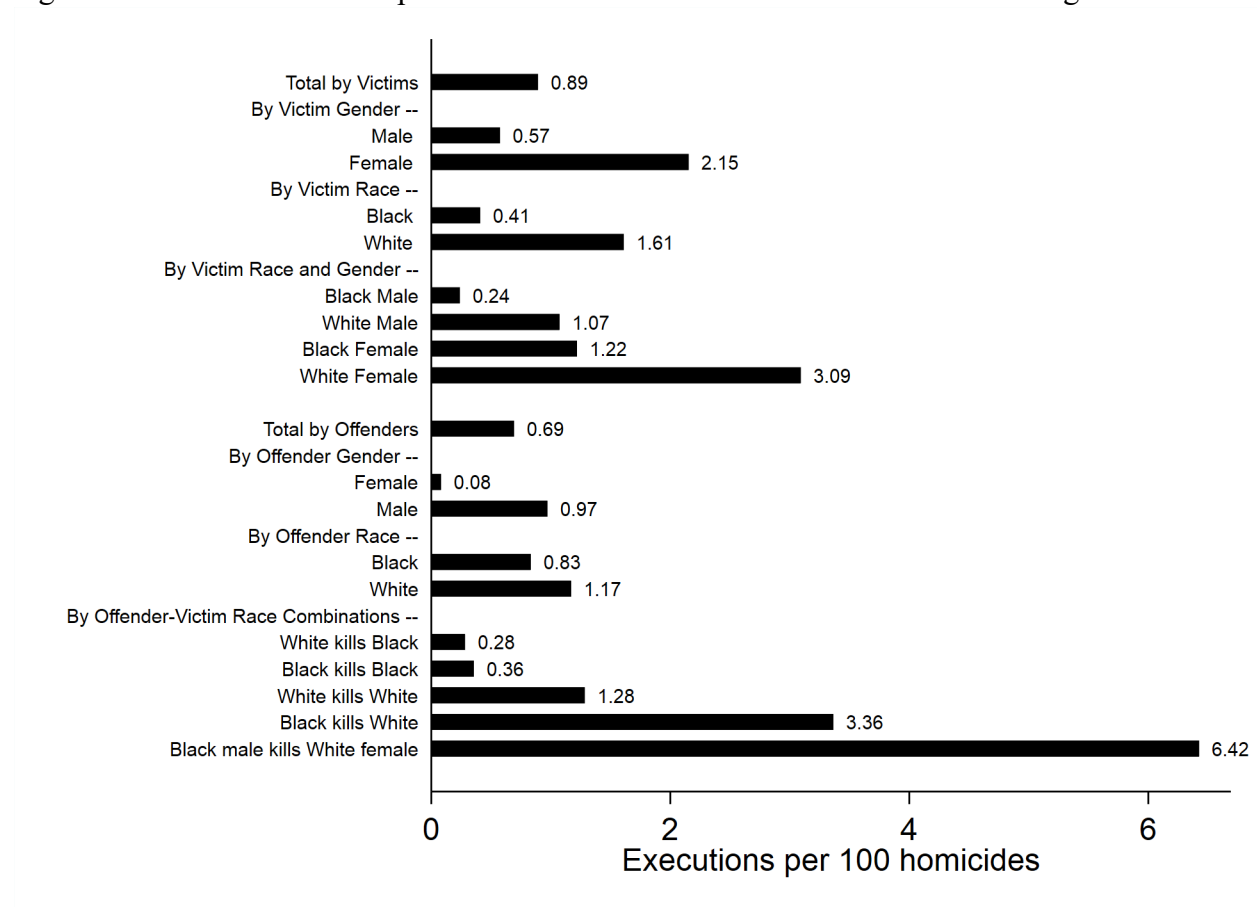
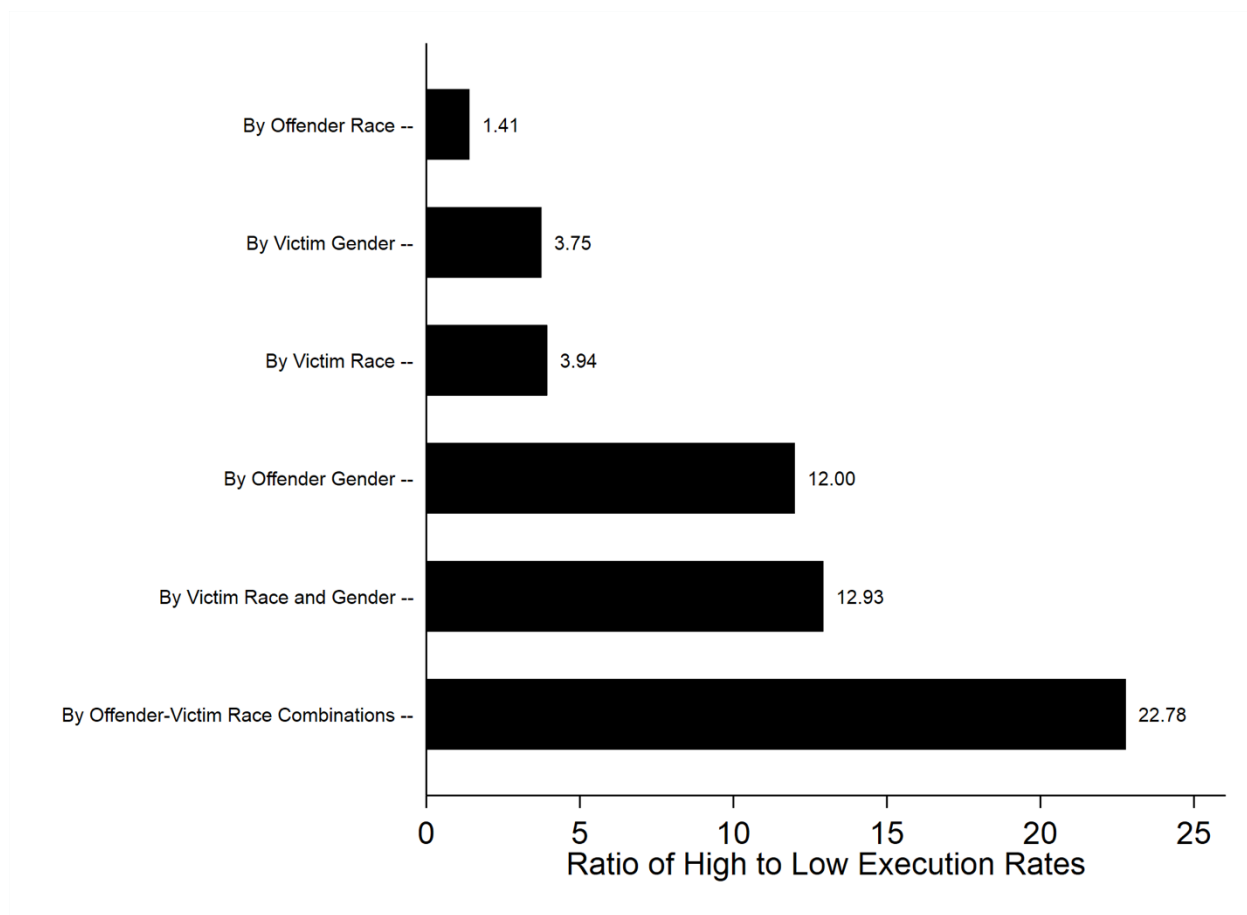


Figure 12 highlights the ratios in sentencing rates shown numerically in Table 1 and visually in Figure 11. As we move down the chart, we see the demographic differences with the greatest variation in execution rate. Yielding the lowest variation in execution rate is offender race. A white offender is 1.41 times more likely to be executed than a black offender. A homicide with a female victim is 3.75 times more likely to result in an execution than a homicide with a male victim. A homicide with a white victim is 3.94 times more likely to result in an execution than a homicide with a black victim. A male offender is 12.00 times more likely to be executed than a female offender. An offender with a white female victim is 12.93 times more likely to be executed than an offender with a black male victim. Offender-victim race combinations results in the highest sentencing disparity, as a black male offender with a white

female victim is 22.78 times more likely to result in an execution than a black male offender with a black male victim.

Figure 12. Execution rates compared



Texas Conclusion

The figures above demonstrate that there is temporal, geographic, and demographic disparity for death sentences and executions in the state of Texas. As per the rationale detailed in the conclusion for the United States data, this shows the state's death penalty system is operating in violation of the Fourteenth Amendment.

In the following sections, we will examine whether four more states also demonstrated temporal, geographic, and demographic disparity in their capital sentencing. As the race and gender data exists for offenders and victims in these states in all cases that resulted in a death

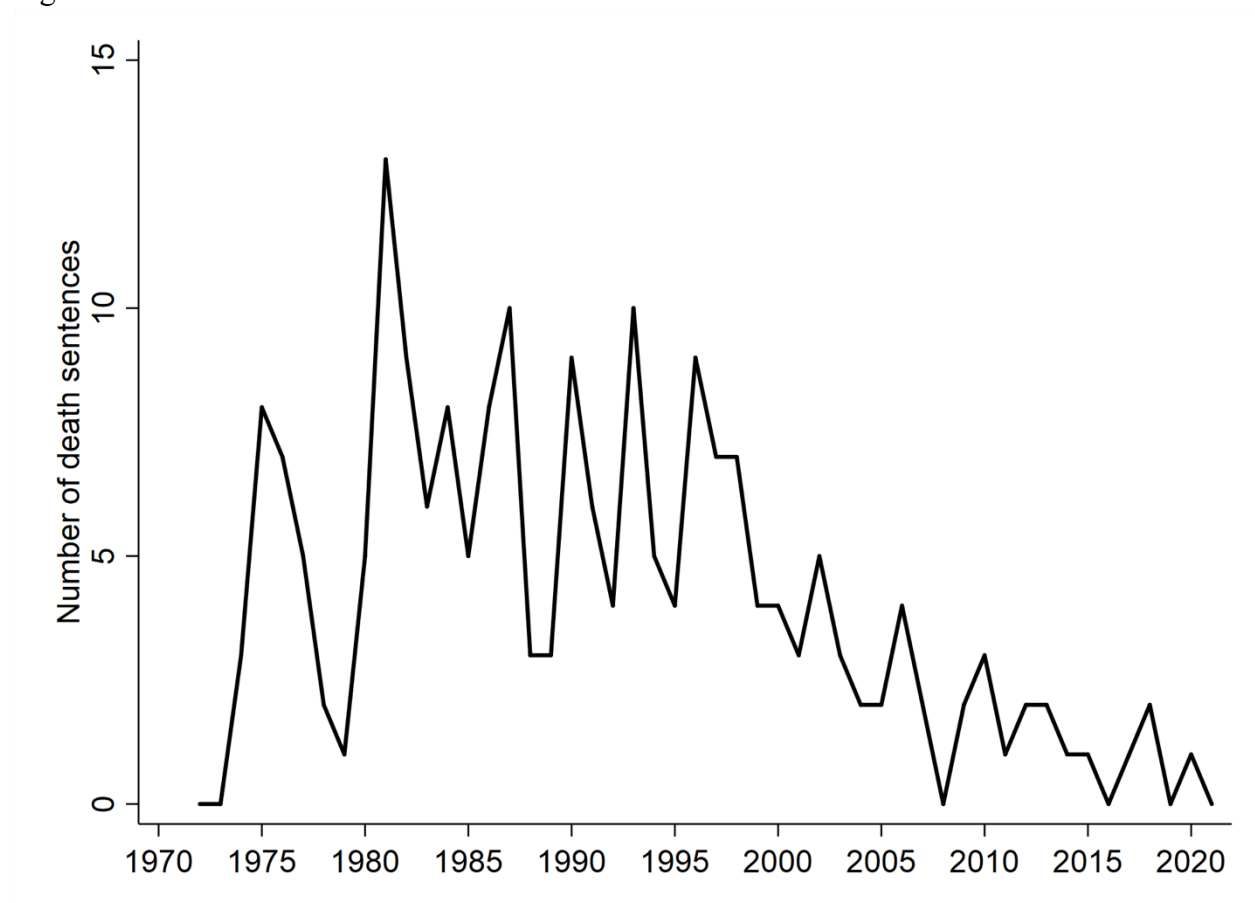
sentence, rather than only the cases resulting in executions, we will examine these patterns for death sentences rather than for executions.

Mississippi

Declining Usage Over Time

Since Mississippi's reinstatement of the death penalty in 1977, 202 individuals have been sentenced to death, which is an average of about 4.7 per year. Figure 13 shows these numbers, making clear their peak of 13 death sentences in 1981. Rates remained relatively high in the late 1980s and early 1990s, peaking at 10 death sentences in both 1987 and 1993. After that, we see the annual number of death sentences decreasing and remaining much lower in the last roughly 25 years.

Figure 13. Death sentences in the modern era



Few executions carried out since 1976

Mississippi has carried out 21 executions in the modern era. All were men. Fifteen of these men were white and six were black.

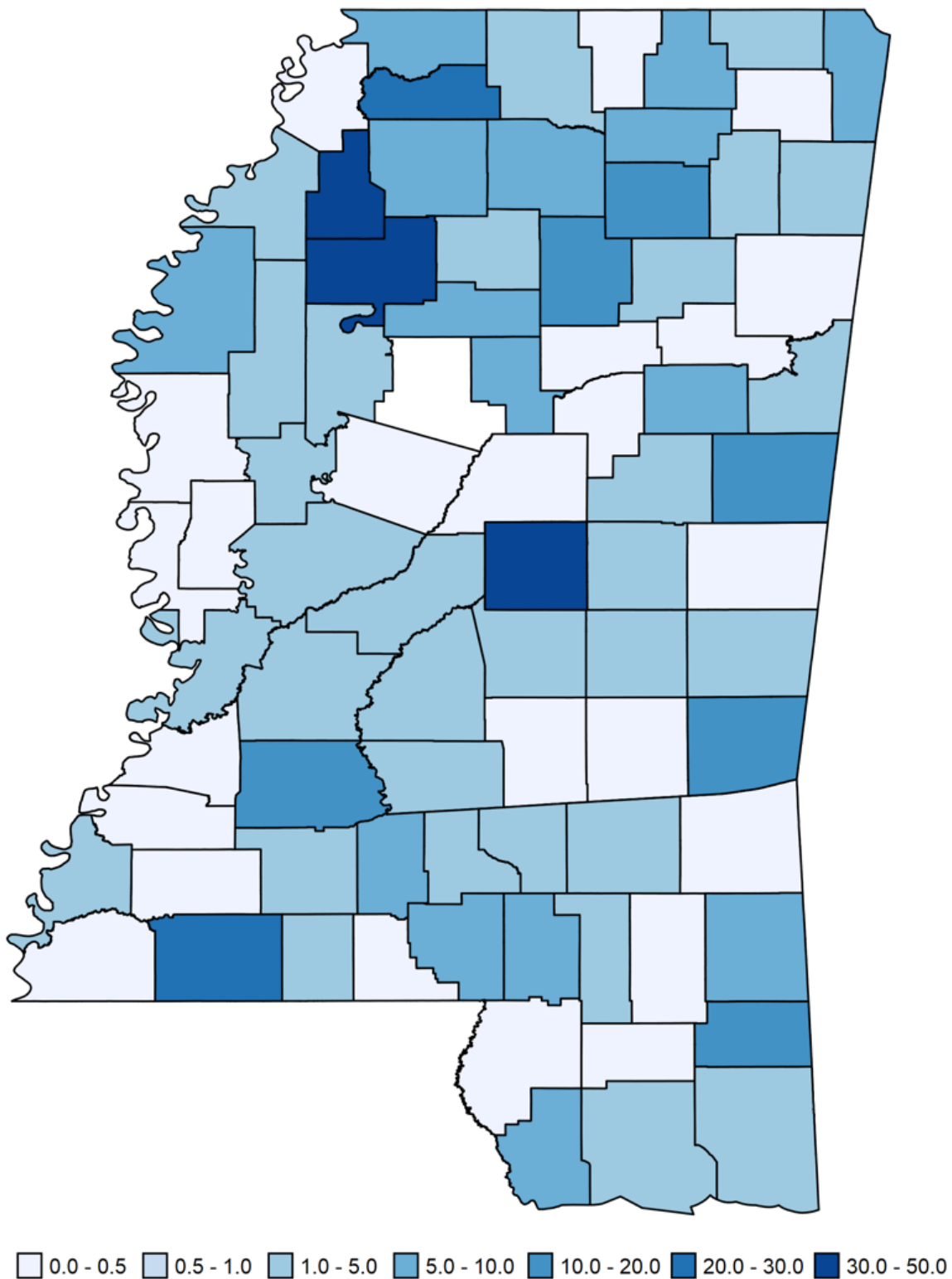
Geographic incongruence between homicide rates and death sentences

Mississippi has wide range of death sentences per 100 homicide victims from county to county.

In Figure 14, as the counties get darker in color, they have higher sentences rates per 100 homicides. The counties with the highest sentencing rate per 100 homicides are Quitman County, Tallahatchie County, and Leake County. These counties have only sentenced two, one, and three people, respectively, but because of their low volume of homicides, the rate is still rather high.

Figure 14. Death sentences per 100 homicide victims

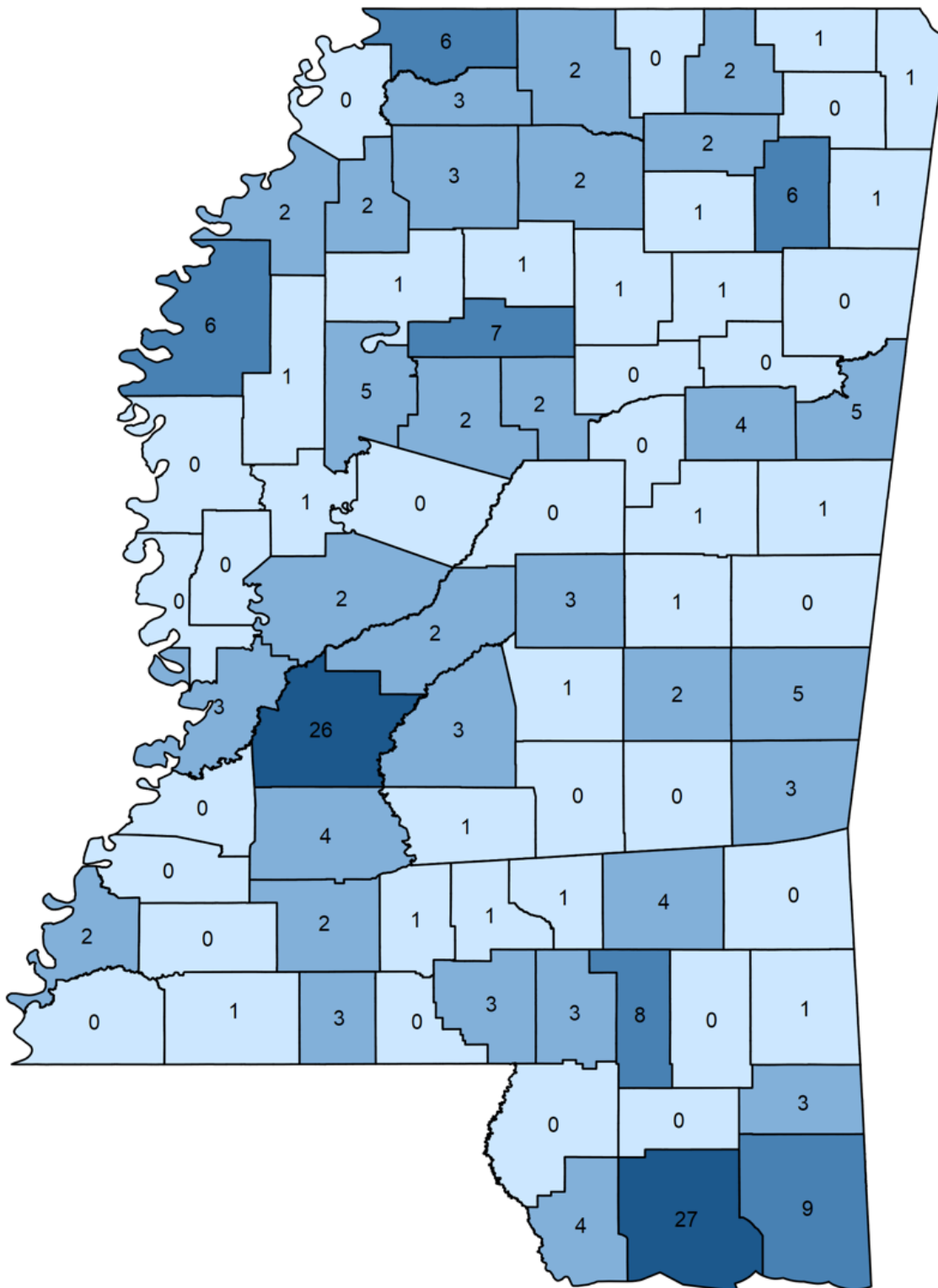
Death Sentences per 100 homicide victims



The sheer number of death sentences vary drastically from county to county as well. Only two counties have above twenty death sentences, while all other counties have under ten. Hinds County, in which the state capital of Jackson resides, has 26 death sentences, and Harrison County, which contains the city of Biloxi, has 27 death sentences. The majority of the counties in Mississippi have under three death sentences.

Figure 15. Death sentences per county

Death Sentences



Race and Gender Disparities

Since reinstating the death penalty in 1976, Mississippi has sentenced 202 people to death. Nine of these offenders have been female (4.5%) and 193 of them have male (95.5%). The racial breakdown of the sentences is as follows: there were 104 black (51.5%) offenders and 82 white (40.6%) offenders sentenced to death. Table 3 further breaks down the disparities based on offender and victim race and gender in Mississippi homicides from 1977 to 2020 and death sentences. Although not every homicide is capital eligible, we would still expect sentencing rates to be somewhat reflective of the population demographics. According to the 2020 census, 59.1% of the state's population is white and 37.8% is black. The disproportionate sentencing of black individuals is most likely indicative of bias in the court rather than those crimes being considered the worst of the worst.

Table 3 compares the over 8,500 homicides in the state with the 202 death sentences over a 45-year period. There are 8,664 homicide offenders and 202 of which received a death sentence, thus making the sentencing rate per 100 homicides 2.33.

Comparing rates within each grouping is where the true significance of the data lays. If sentencing is unaffected by race and gender, we would see similar rates with slight variation caused by random error. Unfortunately, this is not the case and we see clear sentencing differences based on the race and gender of both the victim and the offender. It is important to note that the number of victims does impact the sentencing rate, meaning those with multiple victims are more likely to receive a death sentence. When comparing offenders, we see that 202 offenders out of 8,664 received death, which is a rate of 2.33, but when we look at victims of those cases we find that there are 220 victims from the death sentenced cases out of the 9,041 victims in total, and therefore that rate is 2.54.

As we move through the chart, we see that sentencing and execution rate fluctuates greatly based on race and gender. Firstly, female offenders are sentenced to death at a rate of 0.75 sentences per 100 homicides, but male offenders are sentenced at a rate of 3.14. Black offenders are sentenced at a rate of 1.81 and white offenders are sentenced at a rate of 5.34. Victim demographics, once again, factor greatly into the rate at which someone will receive a death sentence. An offender with a male victim is sentenced at a rate of 1.65, while an offender with a female victim is sentenced at a rate of 5.17. Moreover, an offender with a black victim will be sentenced at a rate of 0.81, but an offender with a white victim will be sentenced at a rate of 6.81.

Again, we see the most drastic contrast when we examine the demographic factors simultaneously. When a black male is killed, the sentencing rate of the offender is only 0.60, but when a white female is killed, the sentencing rate of the offender is 10.82. The highest death sentence rate, however, occurs in cases where a black male kills a white female, which has a sentencing rate of 16.42. Figure 16 further summarizes the differences in death sentencing rates.

Table 3. Race and gender characteristics of homicides and death sentences compared.

| | Homicides | Death Sentences | Rate per 100 Homicides |
|---------------------------|------------------|------------------------|-------------------------------|
| Total by Offenders | 8,664 | 202 | 2.33 |
| By Offender Gender | | | |
| Female | 1,200 | 9 | 0.75 |
| Male | 6,156 | 193 | 3.14 |
| By Offender Race | | | |
| Black | 5,749 | 104 | 1.81 |
| White | 1,535 | 82 | 5.34 |
| Total by Victims | 9,041 | 220 | 2.43 |
| By Victim Gender | | | |
| Male | 7,092 | 117 | 1.65 |
| Female | 1,933 | 100 | 5.17 |

| | | | |
|---|-------|-----|-------|
| By Victim Race | | | |
| Black | 6,578 | 53 | 0.81 |
| White | 2,290 | 156 | 6.81 |
| By Victim Race and Gender | | | |
| Black Male | 5,364 | 32 | 0.60 |
| Black Female | 1,213 | 21 | 1.73 |
| White Male | 1,613 | 83 | 5.15 |
| White Female | 675 | 73 | 10.82 |
| By Offender-Victim Race Combinations | | | |
| Black kills Black | 5,190 | 37 | 0.71 |
| White kills Black | 191 | 6 | 3.14 |
| White kills White | 1,327 | 70 | 5.28 |
| Black kills White | 505 | 62 | 12.28 |
| Black male kills White female | 140 | 23 | 16.43 |

Figure 16. Rate of death sentences by race and gender of offender and victim

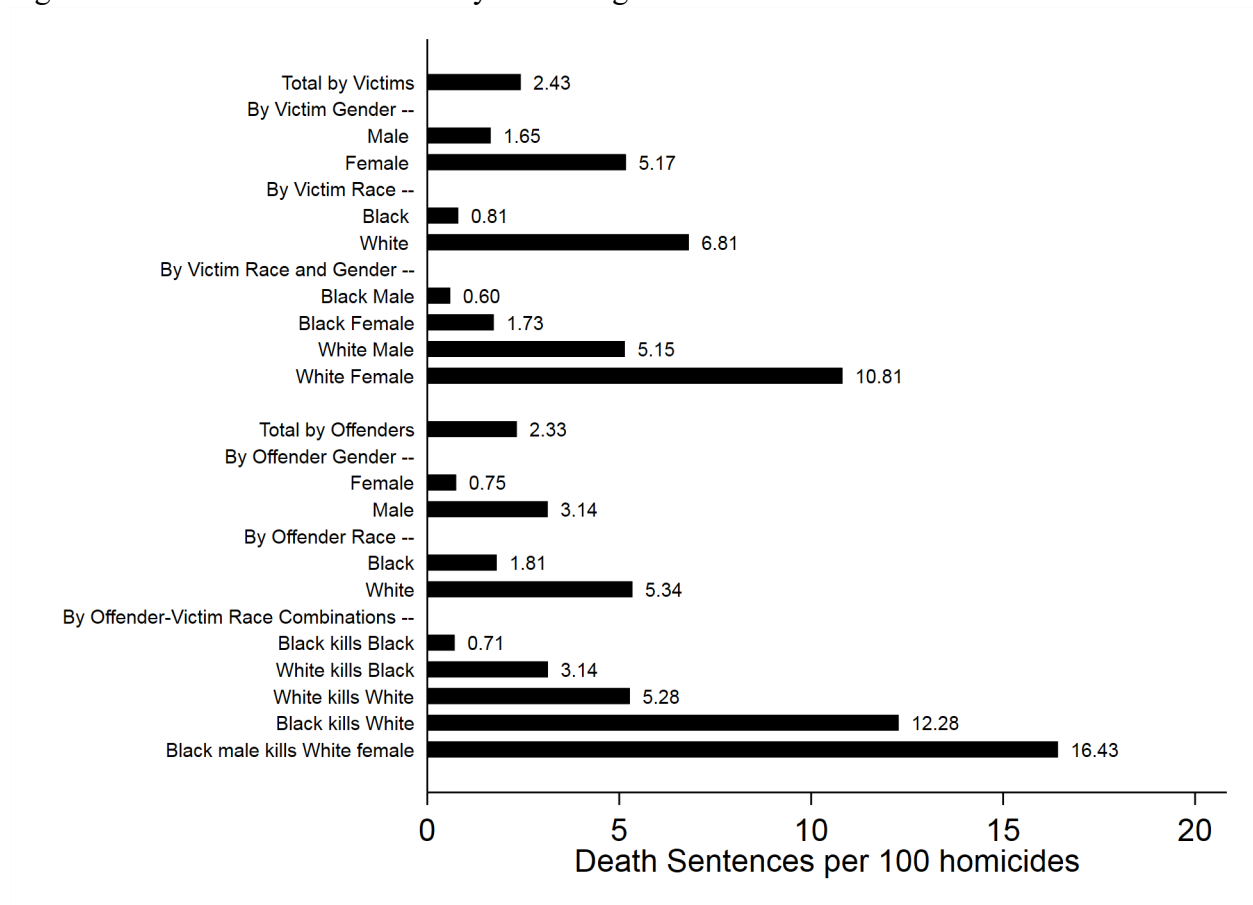
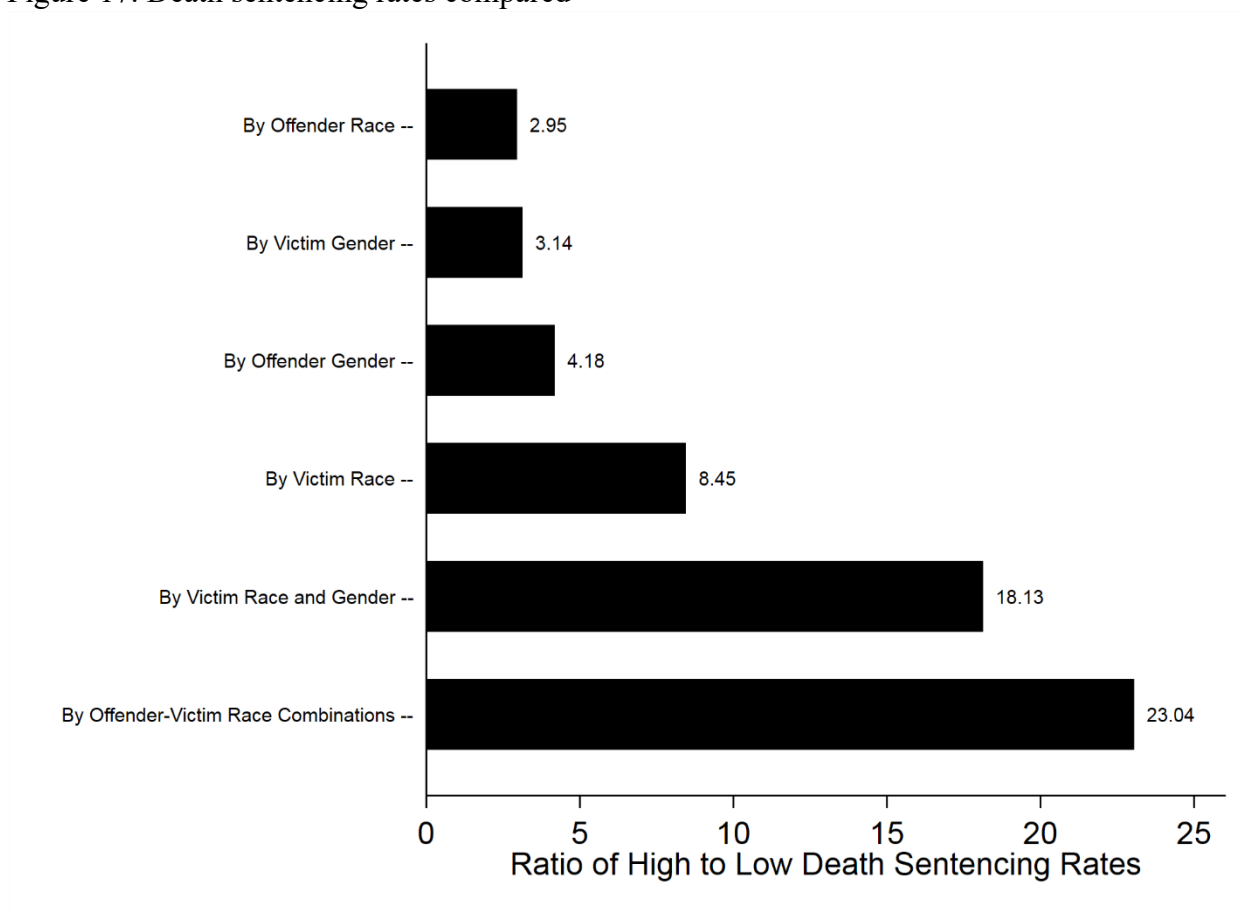


Figure 17 compares the death sentencing rates shown in Table 1 between each demographic group from lowest to highest. Looking at offenders, white offenders are 2.95 times more likely to receive a death sentence than black offenders. Next, we see that an offender with a female victim is 3.14 times more likely to be sentenced to death than an offender with a male victim. A male offender is 4.18 times more likely to receive a death sentence than a female offender.. An offender with a white victim is 8.45 times more likely to receive a death sentence than an offender with a black victim.

We see this ratio of likelihood to receive a death sentence jump to over eighteen, 18.13, when we compare the death sentencing rate of offenders with white female victims to offenders with black male victims. What makes this discrepancy even more jarring is that black male victims account for majority of all homicide victims in the state (75.9%), but only 15% of death sentences. The circumstances most likely to result in a death sentence are when a black male kills a white female. The sentencing rate for this condition is 16.43, meaning that a black male that kills a white female is 23.04 times more likely to receive a death sentence than a black male who kills another black male. This type of homicide, when a black male kills a white female, is also the least common, accounting for only 140 cases in the entire 45-year period being examined. However, 23 of these cases resulted in a death sentence, so they represent 11.4% of all death sentences.

Figure 17. Death sentencing rates compared



Mississippi Conclusion

Through these figures we see that Mississippi follows a similar pattern of temporal, geographic, and demographic disparity for death sentences as the United States and Texas do for executions. This demonstrates that Mississippi's death penalty is also not being carried out in conformance with the Fourteenth Amendment.

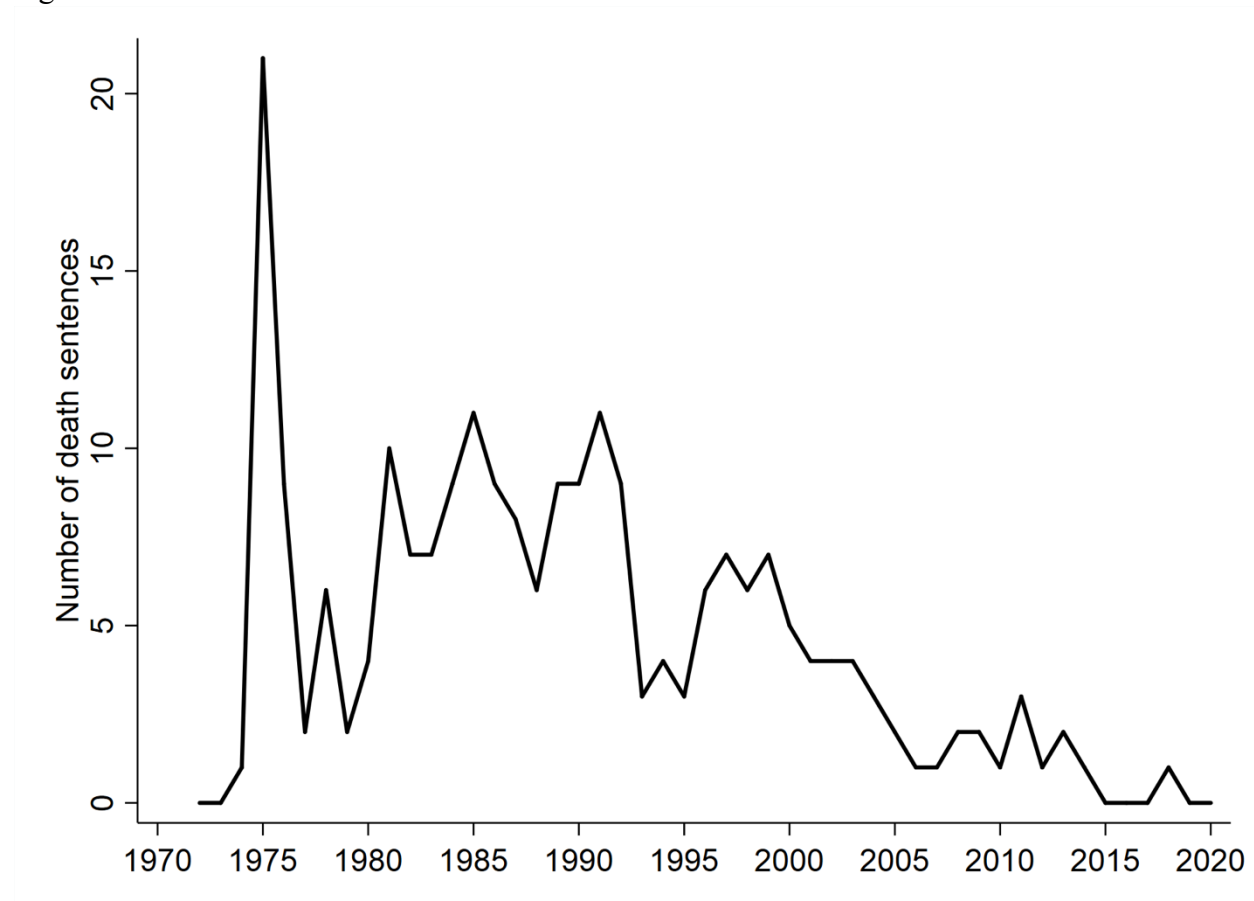
Tennessee

Declining Usage Over Time

Tennessee reinstated its death penalty in 1976, and has since sentenced 225 individuals to death. This is an average of 5.1 death sentences per year. Figure 18 shows the number of death sentences in the state per year. The number of sentences peaked drastically at 21 individuals in 1975 and has rarely seen half as many individuals sentences in a year since. The state's annual

number of death sentences has been on a steady decline since the early 1990s. This lower number of annual sentences has been relatively consistent in the last 30 years.

Figure 18. Death sentences in the modern era



Few executions carried out since 1976

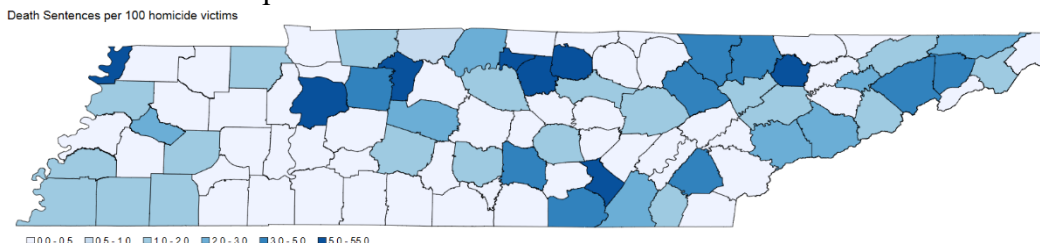
Despite sentencing 225 individuals to death, the state has only executed 13 of them. All of the offenders executed were male and 12 were white.

Geographic incongruence between homicide rates and death sentences

Tennessee has strong variation in death sentencing rates per 100 homicide victims from county to county. As highlighted by Figure 19, the vast majority of counties have under five sentences and many have zero. However, moving from West to East across the map, we see that Lake County, Humphreys County, Cheatham County, Trousdale County, Smith County, Jackson County, Sequatchie County, and Union County, all have disproportionately high sentencing rates

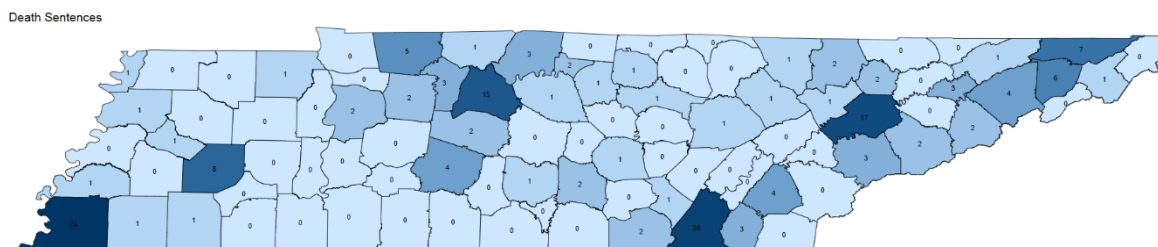
per 100 homicide victims. Although in all of the aforementioned counties there are only one or two death sentences per county, because of the especially low number of murders in those counties, a singular death sentence spikes that sentencing rate.

Figure 19. Death sentences per 100 homicide victims



The number of death sentences also varies from county to county. The majority of counties have between zero and two death sentences and only four counties in the state have over ten death sentences. Davidson County, where Nashville is located, has 15 death sentences. Knox County, where Knoxville is located, has 17 death sentences. Hamilton County, where Chattanooga is located, has 24 death sentences. Shelby County, where Memphis is located has 74 death sentences. It is evident that the counties that contain the major cities within Tennessee have a significantly higher number of death sentences, however, because these cities have much higher homicide rates than the more rural counties in the state, we still see very low sentences rates when we look at death sentences per 100 homicide victims.

Figure 20. Death sentences per county



Race and Gender Disparities

In addition to temporal and geographic disparities in the 225 individuals sentenced to death in the state of Tennessee, we also see disparities based on the race and gender of both the offender and victim. Table 4 depicts the variation by race and gender in the last 44 years of homicides and death sentences in the state. Out of the 225 individuals given death sentences, 222 (98.7%) of the offenders were male and only three (1.3%) were female. Additionally, 135 offenders were white and 81 offenders were black. This points to a disproportionate amount of death sentences being given to black individuals, as black individuals account for 17.1% of the state's population according to the 2020 census but 36.0% of the death sentences, whereas white individuals account for 78.4% of the state's population but 60.0% of the death sentences.

It is important to note that there are 21,432 total homicides and only 225 death sentences, making the rate of death sentences per 100 homicides 1.05, meaning that roughly 1% of all homicides in Tennessee result in a death sentence. The more telling piece of the puzzle lays in the variation in the sentencing rate as we isolate different aspects of the offenders' and victims' race and gender. The rate of death sentences for black offenders is 0.72 and the rate of death sentences for white offenders is 1.98.

Death sentences are reserved for cases with white victims. In a case with a black victim, the death sentence rate per 100 homicides is 0.60, but in a case with a white victim the sentencing rate is 1.72. This fluctuation in sentencing rates is exacerbated by gender. In a homicide with a black male victim the sentencing rate is 0.47, but if a white female is the victim of a homicide, the sentencing rate is 3.32.

The highest rate of sentencing occurs when there is a black male offender and a white female victim. The rate in these cases is 4.21. This is significantly lower than the sentencing rate

in cases with a black offender and a black victim, which is a rate of 0.46. Figure 21 highlights the sentencing rates of each of these categories.

Table 4. Race and gender characteristics of homicides and death sentences compared

| | Homicides | Death Sentences | Rate per 100 Homicides |
|---|------------------|------------------------|-------------------------------|
| Total by Offenders | 21432 | 225 | 1.05 |
| By Offender Gender | | | |
| Female | 2249 | 3 | 0.13 |
| Male | 16004 | 222 | 1.39 |
| By Offender Race | | | |
| Black | 11182 | 81 | 0.72 |
| White | 6805 | 135 | 1.98 |
| Total by Victims | 22441 | 247 | 1.10 |
| By Victim Gender | | | |
| Male | 17808 | 133 | 0.75 |
| Female | 4567 | 114 | 2.50 |
| By Victim Race | | | |
| Black | 12576 | 76 | 0.60 |
| White | 9382 | 161 | 1.72 |
| By Victim Race and Gender | | | |
| Black Male | 10594 | 50 | 0.47 |
| Black Female | 1981 | 26 | 1.31 |
| White Male | 6882 | 78 | 1.13 |
| White Female | 2497 | 83 | 3.32 |
| By Offender-Victim Race Combinations | | | |
| Black kills Black | 9488 | 44 | 0.46 |
| White kills Black | 681 | 4 | 0.59 |
| White kills White | 6031 | 107 | 1.77 |
| Black kills White | 1538 | 26 | 1.69 |
| Black male kills White female | 309 | 13 | 4.21 |

Figure 21. Rate of death sentences by race and gender of offender and victim

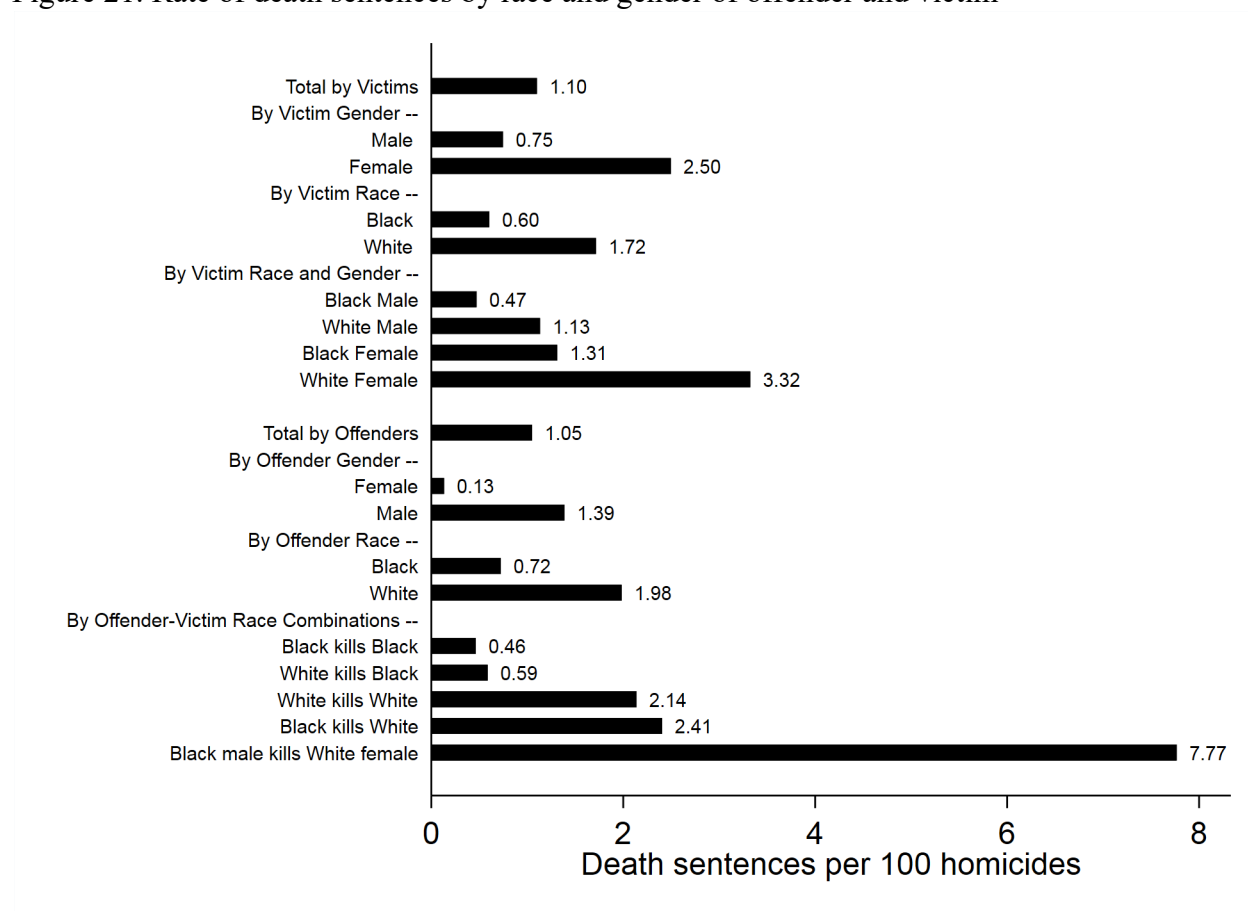
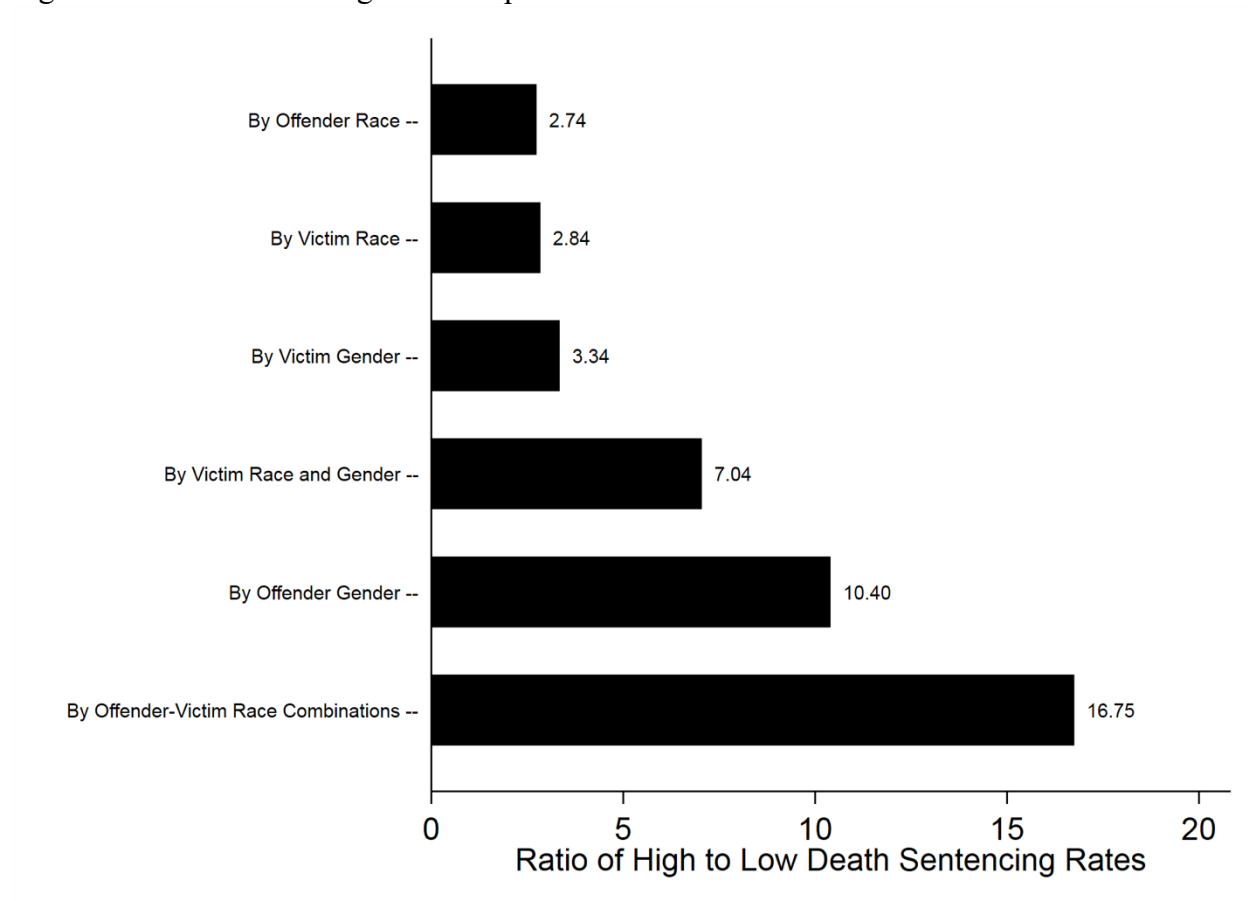


Figure 22 further breaks down the variation in sentencing rates by offender and victim race and gender by transforming the differing rates into ratios. A white offender is 2.74 times more likely to be sentenced to death than a black offender and an offender with a white victim is 2.84 times more likely to be sentenced to death than an offender with a black victim. Additionally, an offender with a female victim is 3.34 times more likely to receive a death sentence than an offender with a male victim. An offender with a white female victim is 7.04 times more likely to be sentenced to death than an offender with a black male victim. A male offender is 10.40 times more likely to be sentenced to death than a female offender. Lastly, a black male offender with a white female victim is 16.75 times more likely to receive a death

sentence than a black male offender with a black male victim, making that demographic combination the most likely to result in the death sentence.

Figure 22. Death sentencing rates compared



Tennessee Conclusion

The above figures continue this pattern of temporal, geographic, and demographic sentencing disparities within the state.

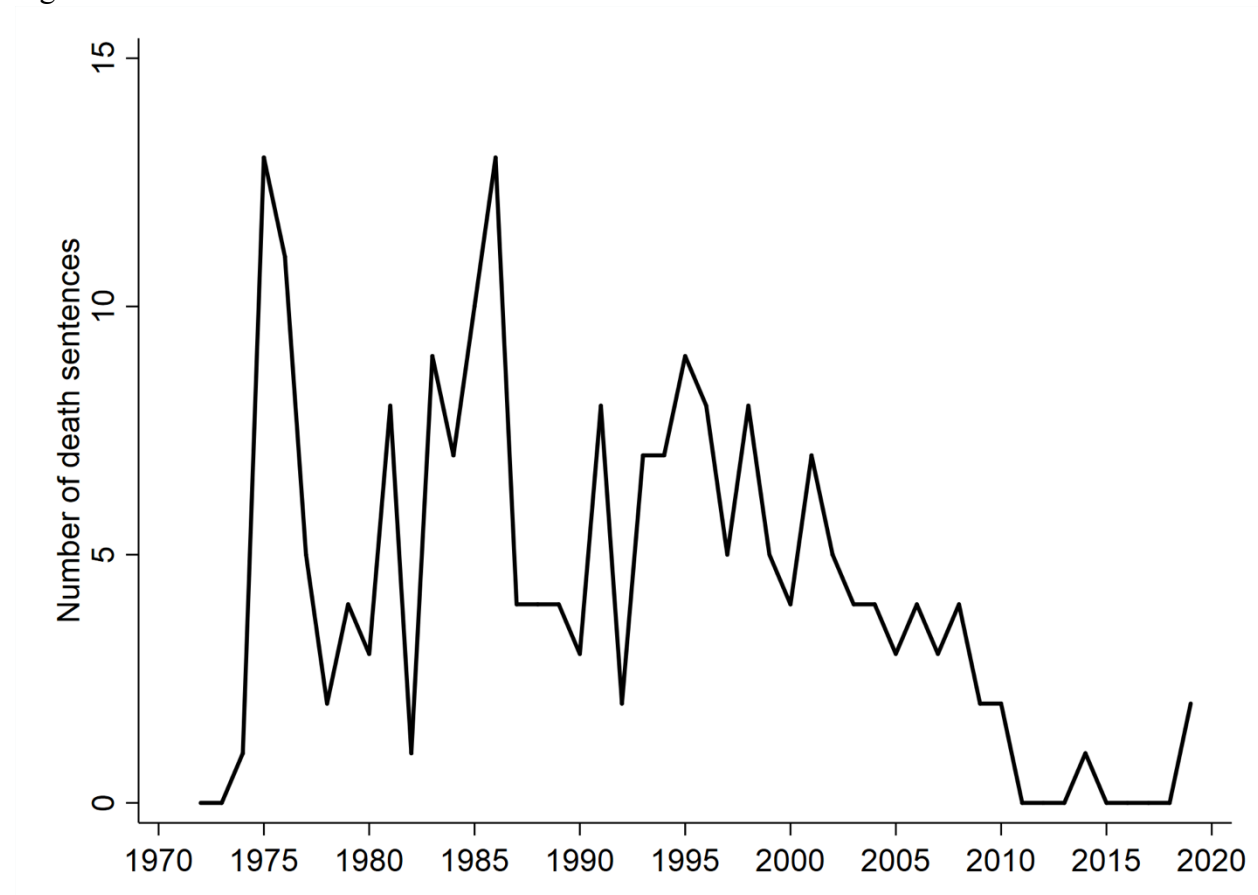
South Carolina

Declining Usage Over Time

South Carolina has sentenced 206 individuals to death since the state reinstated the death penalty. Figure 23 is rather similar to the temporal disparity graph of Mississippi, as both states peaked at 13 death sentences. For South Carolina this peak came in 1975 and 1986. In all other years that the state has had the death penalty, less than 10 individuals have been sentenced

annually. Despite this already low number of annual sentences, we see this number drop even further at the start of the 1990s.

Figure 23. Death sentences in the modern era



Few executions carried out since 1976

South Carolina has carried out 43 executions out of the 206 death sentences, making their

execution rate roughly 21%, which is surprisingly high. However, when considering the nearly

19,000 homicide offenders in this timeline, the 206 death sentences and 43 executions once again

seems to be just a blip.

Geographic incongruence between homicide rates and death sentences

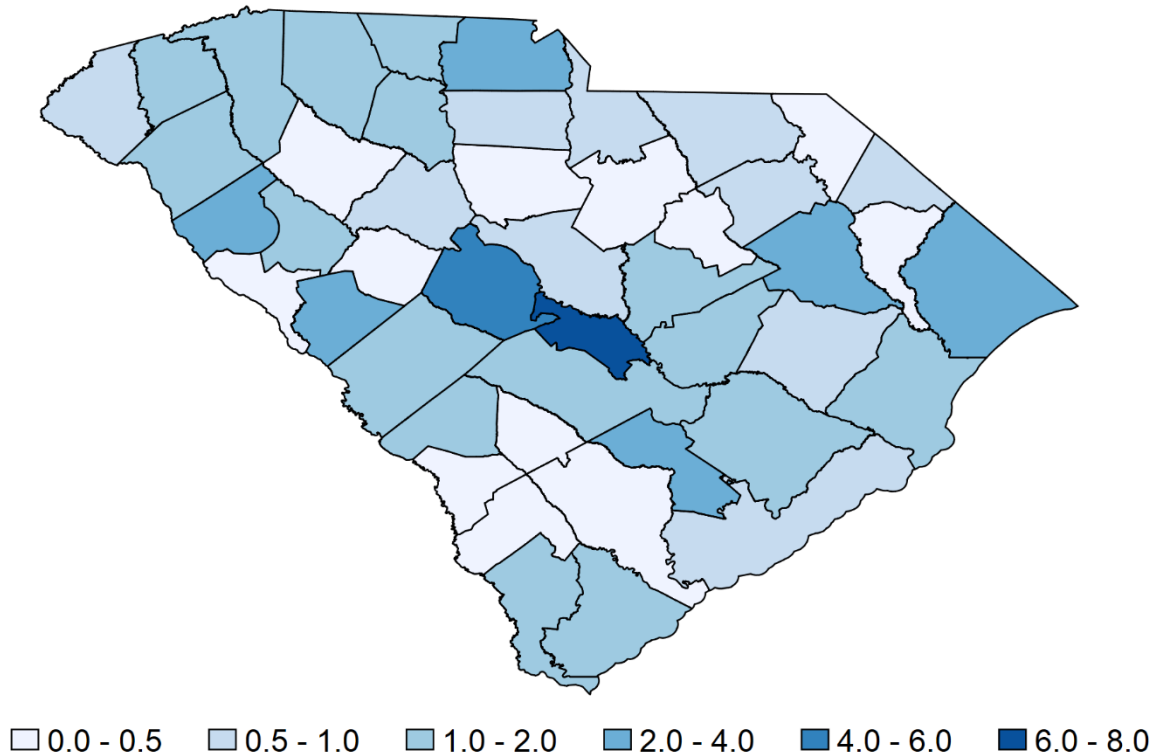
The rate of death sentences per 100 homicides is consistently low for the entire state and never

surpasses eight death sentences per 100 homicides. The county with the highest sentencing rate,

however, is Calhoun County, which is the third least populous county in the state and only has four total death sentences.

Figure 24. Death sentences per 100 homicide victims

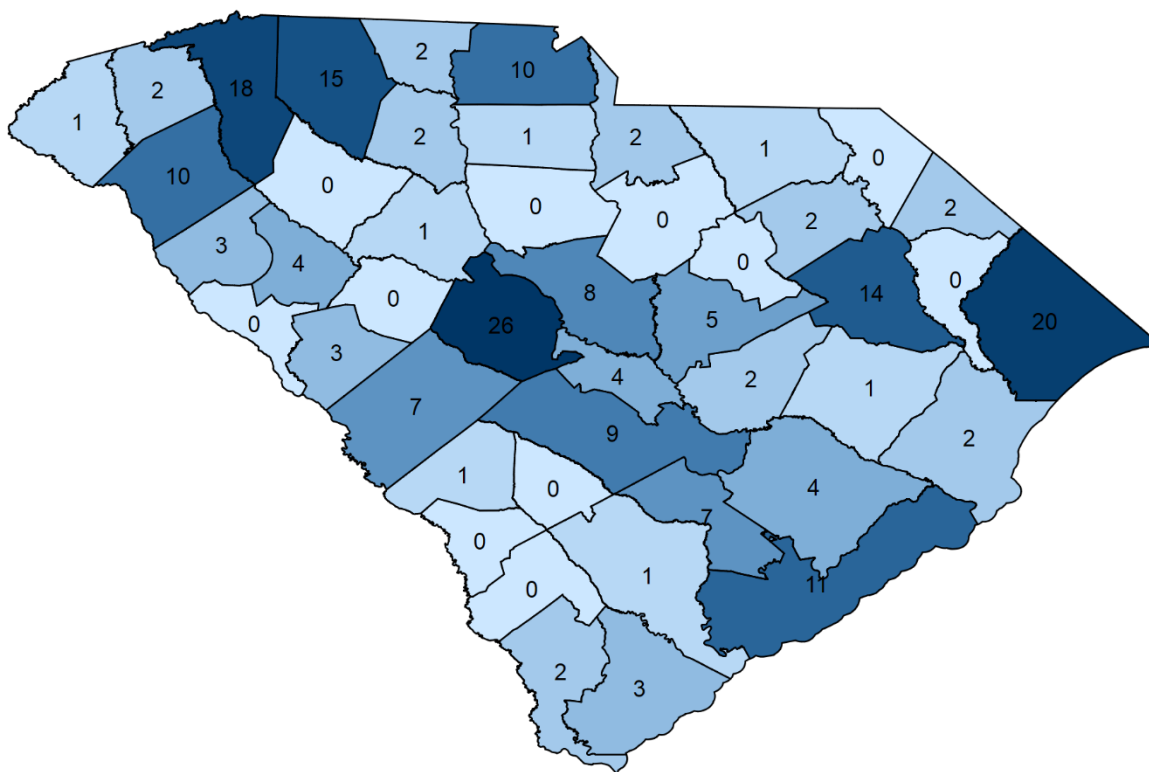
Death Sentences per 100 homicide victims



Eight counties, out of the 46 counties in total, have 10 or more death sentences. These counties, in order of increasing number of sentences, are Anderson County (10), York County (10), Charleston County (11), Florence County (14), Spartanburg County (15), Greenville County (18), Horry County (20), and Lexington County (26). The 38 remaining counties all have under 10 death sentences and the vast majority have less than five.

Figure 25. Death sentences per county

Death Sentences



Race and Gender Disparities

Since the state's reinstatement of the death penalty in 1977, South Carolina has sentenced 206 people to death. Only one offender sentenced to death out of the 206 was a female. Ninety-four (46%) of the offenders were black and 110 (54%) were white. This once again, is starkly different from the state's overall racial breakdown, which is 69% white and 27% black. Out of the 18,638 homicides, 206 offenders received a death sentence making the rate of sentencing per 100 homicides 1.11, meaning slightly over 1% of all homicide offenders in the state receive a death sentence.

This baseline of 1.11 death sentences per 100 homicides fluctuates greatly based on the race and gender of both the offender and the victim. The higher the rate, the higher the likelihood of an offender meeting those conditions of race and gender will receive a death sentence. The

rate for female offenders is 0.04 death sentences per 100 homicides, whereas for male offenders the rate is 1.38. For offender race, there is variation as well. The rate for black offenders is 0.82 and for white offenders the rate is 2.00. Victim race and gender is also a high predictor of likelihood in receiving a death penalty, as we see that the rates for female victims and white victims are much higher. The rate for offenders with a male victim is 0.83, but for those with a female victim the rate is 2.41. Furthermore, the rate for offenders with a black victim is 0.41, but for those with white victim the rate is 2.38. This is why white offenders are sentenced at a higher frequency: it is the race of their victim that makes the substantial difference in their sentencing, not their own race, and homicides typically occur within racial groups. This is proven by the rate of black-on-black homicides resulting in a death sentence rate being 0.22 while the rate of white-on-white homicides resulting in a death sentence rate of 1.67.

We see these rates jump even higher when we look at race and gender data of the victim together. The rate for an offender with a black male victim is 0.28, for a black female victim it is 0.99, for a white male victim it is 1.79, and for a white female victim it is 3.86.

Table 5. Race and gender characteristics of homicides and death sentences compared

| | Homicides | Death Sentences | Rate per 100 Homicides |
|---------------------------|------------------|------------------------|-------------------------------|
| Total by Offenders | 18638 | 206 | 1.11 |
| By Offender Gender | | | |
| Female | 2363 | 1 | 0.04 |
| Male | 14815 | 205 | 1.38 |
| By Offender Race | | | |
| Black | 11506 | 94 | 0.82 |
| White | 5497 | 110 | 2.00 |
| Total by Victims | 19789 | 235 | 1.19 |
| By Victim Gender | | | |
| Male | 15335 | 128 | 0.83 |
| Female | 4444 | 107 | 2.41 |
| By Victim Race | | | |

| | | | |
|---|-------|-----|------|
| Black | 11924 | 49 | 0.41 |
| White | 7644 | 182 | 2.38 |
| By Victim Race and Gender | | | |
| Black Male | 9704 | 27 | 0.28 |
| Black Female | 2218 | 22 | 0.99 |
| White Male | 5467 | 98 | 1.79 |
| White Female | 2177 | 84 | 3.86 |
| By Offender-Victim Race Combinations | | | |
| Black kills Black | 9741 | 20 | 0.21 |
| White kills Black | 556 | 12 | 2.16 |
| White kills White | 4903 | 82 | 1.67 |
| Black kills White | 1670 | 62 | 3.71 |
| Black male kills White female | 385 | 30 | 7.79 |

Figure 26 demonstrates these fluctuations in sentencing rate based on race and gender visually. We see that having a white victim and a female victim puts the offender at a much higher odds of receiving a death sentence. These odds are amplified further when we combine the victim race and gender, resulting in a white female victim. The highest rate, of 7.79, occurs when a black male offender has a white female victim.

Figure 26. Rate of death sentences by race and gender of offender and victim

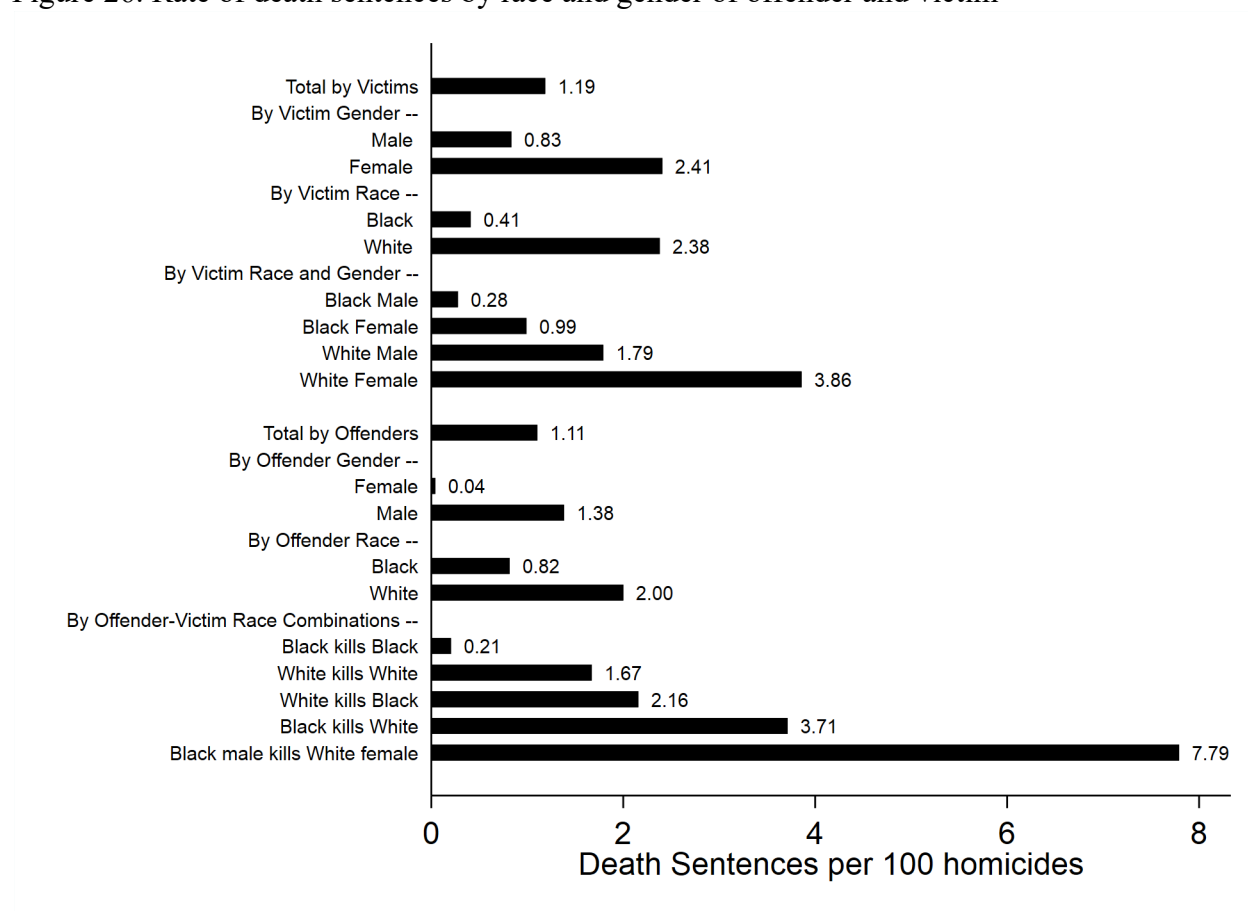
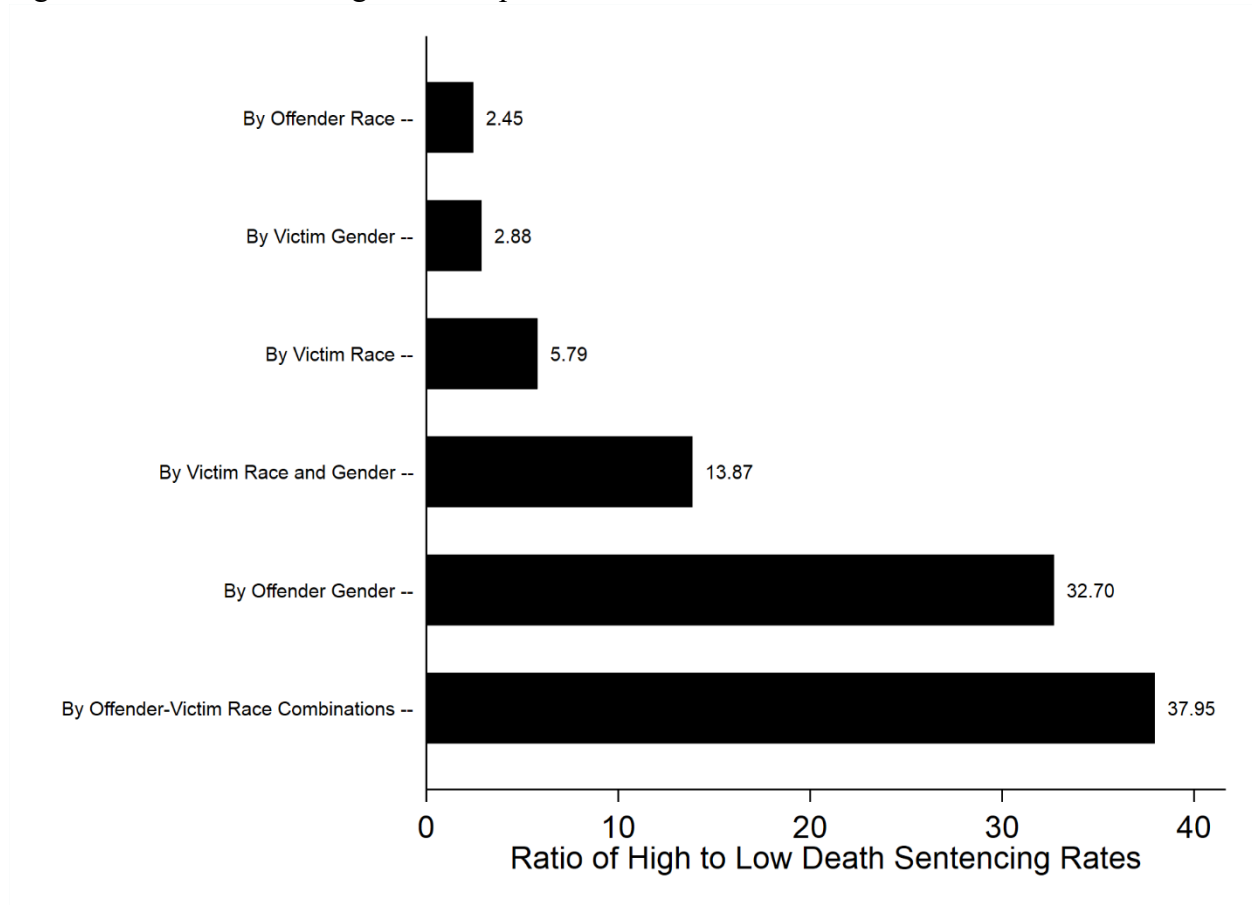


Figure 27 examines which comparisons have the highest ratios of generating a death sentence by comparing the dichotomies within each category. For example, a white offender is 2.45 more likely to receive a death sentence than a black offender. We see this gap between the groups grow wider as we move down the chart. An offender with a female victim is 2.88 times more likely to receive a death sentence than an offender with a male victim. An offender with a white victim is 5.79 time more likely to receive a death sentence than an offender with a black victim. An offender with a white female victim is 13.87 times more likely to receive a death sentence than an offender with a black male victim. A male offender is 32.70 times more likely to receive a death sentence than a female offender. The largest ratio is generated when we add together the race and gender of the victim and the race and gender of the offender. A black male

offender with a white female victim is 37.95 times more likely to receive a death sentence than a black male offender with a black male victim.

Figure 27. Death sentencing rates compared



South Carolina Conclusion

South Carolina also exemplifies this pattern of temporal, geographic, and demographic sentencing disparities.

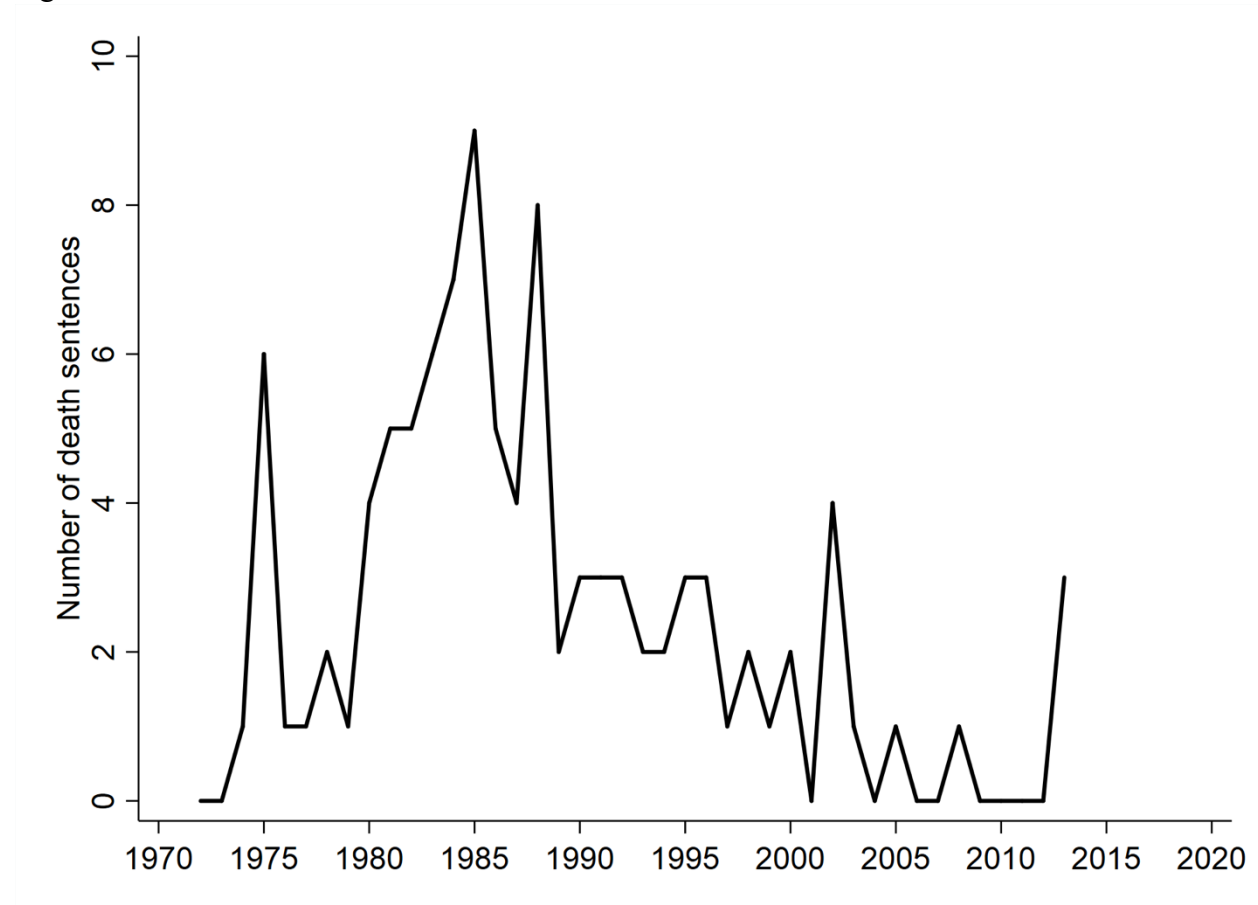
Indiana

Declining Usage Over Time

Since reinstating the death penalty in 1977, Indiana has sentenced 102 individuals to die. Figure 28 models the number of annual death sentences given out in the state. Although this pattern roughly matches that of the other states, it is critical to notice that in a single year Indiana never

sentences more than ten individuals, making the overall annual number of death sentences very low.

Figure 28. Death sentences in the modern era



Few executions carried out since 1976

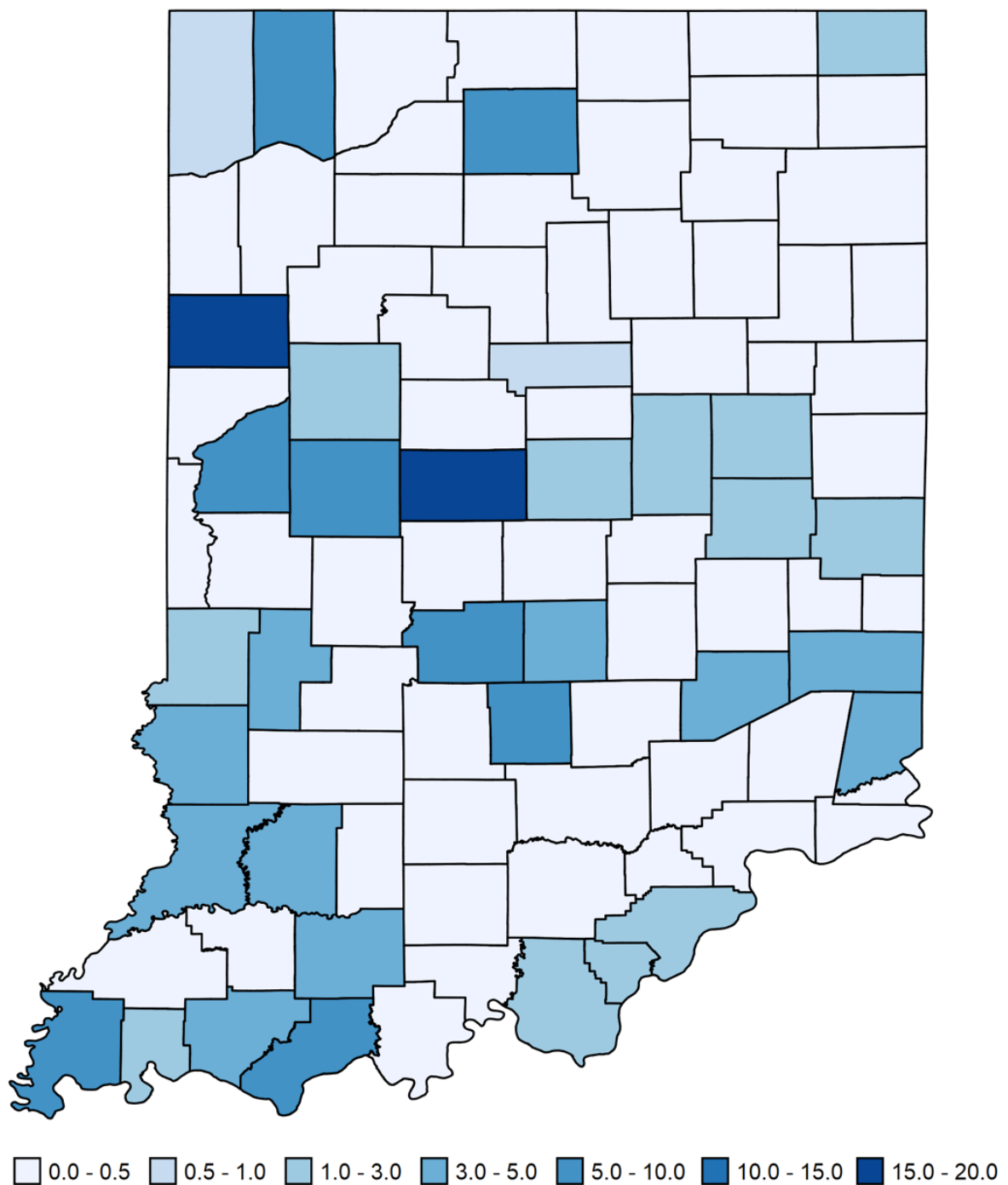
Indiana has only executed 20 individuals, thus demonstrating that even out of the very small number of offenders receive the death penalty only a fraction of said offenders are ever actually executed.

Geographic incongruence between homicide rates and death sentences

The rate of death sentences per 100 homicides is low throughout the state. The two counties with the highest sentencing rate per 100 homicides are Benton County, which has one death sentence, and Boone County, which has three death sentences.

Figure 29. Death sentences per 100 homicide victims

Death Sentences per 100 homicide victims

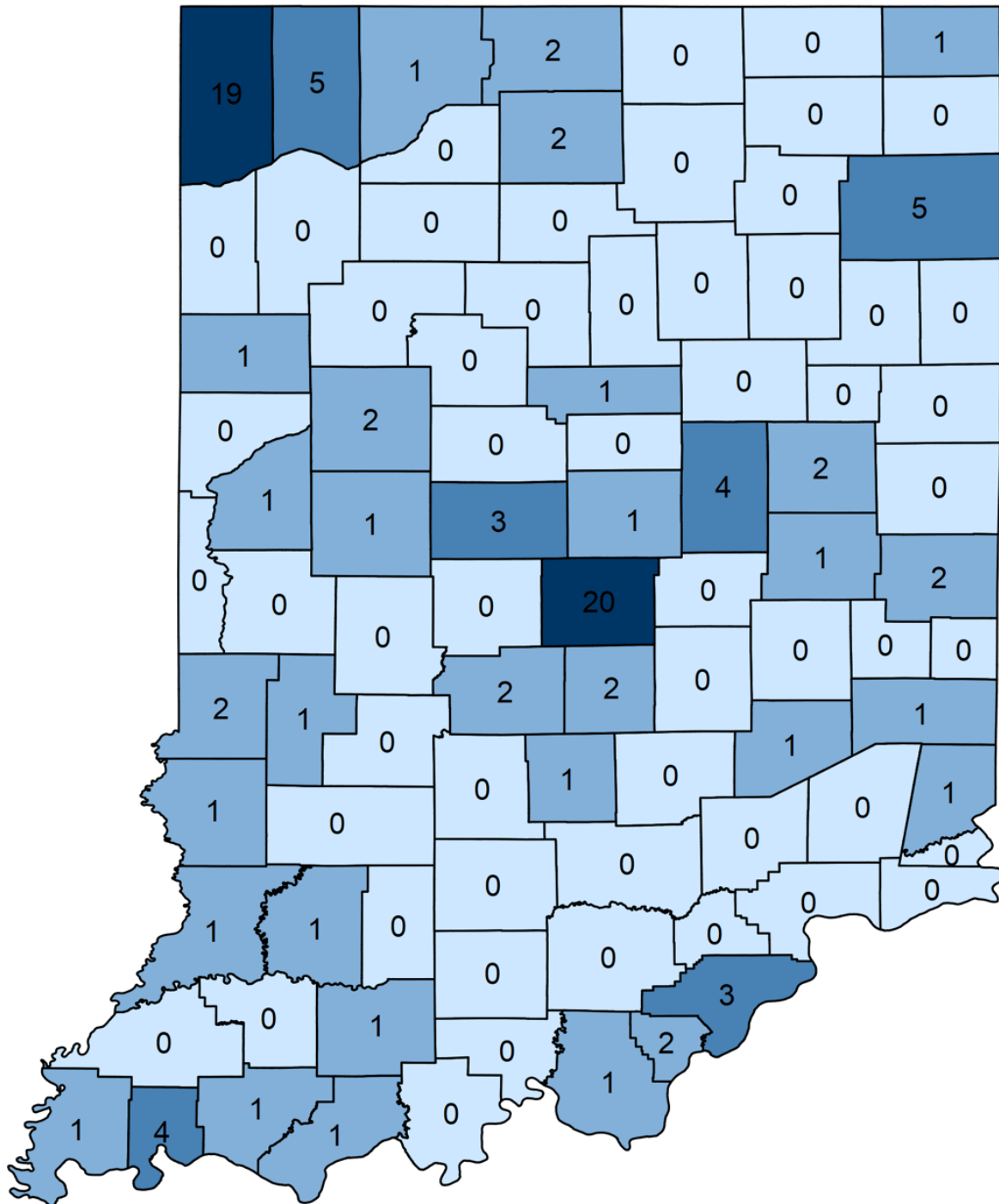


Only two counties in the state have given out over 5 death sentences and those counties are Lake County (19) and Marion County (20). These are the two most populous counties in the

state with Lake County technically being a part of the Chicago metropolitan area and Marion County housing the state's capital. None of the remaining 90 counties have given out more than 5 death sentences.

Figure 30. Death sentences per county

Death Sentences



Race and Gender Disparities

In examining the 102 death sentences given out by the state in the last 44 years we find that the sentencing rate per 100 homicides fluctuates greatly based on several factors. In eliminating these factors, however, we find that the rate of death sentences per 100 homicides is 0.68. To start with the gender of the offender, only three offenders were female making the rate of death sentences 0.25, but there were 99 male offenders sentenced to death making that rate 1.09. Additionally, for the race of offenders 31 black offenders (31%) and 69 white offenders (69%) have been sentenced to death and the rate of sentencing per 100 homicides is 0.57 and 1.54, respectively. The racial breakdown of the state as a whole, however, is 10% black and 85% white, which shows that black offenders are being disproportionately sentenced to death.

Sentencing rate also fluctuates based on the race and gender of the victim. The rate for an offender with a male victim is 0.68, whereas for an offender with a female victim the rate is 1.87 per 100 homicides. Furthermore, the rate for a black victim is 0.28 while the rate for a white victim is 1.78 per 100 homicides. These sentencing rates become even more telling when we examine the race and gender of the victim simultaneously. The sentencing rate for a black male victim is only 0.18, but the rate for a white female victim is 2.55.

The sentencing rates once again change if we examine the offender race in conjunction with the victim race. A black offender with a black victim will be sentenced at a rate of 0.25 per 100 homicides, while a white offender with a white victim will be sentenced at a rate of 1.48, and a black offender with a white victim will be sentenced at a rate of 1.86. The most drastic sentencing rate of 3.05 occurs when there is a black male offender with a white female victim. All of these rates are included in Table 1 and then are displayed in a more visual manner in Figure 31.

Table 6. Race and gender characteristics of homicides and death sentences compared

| | Homicides | Death Sentences | Death Sentences per 100 Homicides |
|---|------------------|------------------------|--|
| Total by Offenders | 15018 | 102 | 0.68 |
| By Offender Gender | | | |
| Female | 1192 | 3 | 0.25 |
| Male | 9117 | 99 | 1.09 |
| By Offender Race | | | |
| Black | 5414 | 31 | 0.57 |
| White | 4483 | 69 | 1.54 |
| Total by Victims | 16110 | 154 | 0.96 |
| By Victim Gender | | | |
| Male | 12289 | 83 | 0.68 |
| Female | 3798 | 71 | 1.87 |
| By Victim Race | | | |
| Black | 8515 | 24 | 0.28 |
| White | 7151 | 127 | 1.78 |
| By Victim Race and Gender | | | |
| Black Male | 7165 | 13 | 0.18 |
| Black Female | 1350 | 11 | 0.81 |
| White Male | 4796 | 67 | 1.40 |
| White Female | 2352 | 60 | 2.55 |
| By Offender-Victim Race Combinations | | | |
| Black kills Black | 4421 | 11 | 0.25 |
| White kills Black | 354 | 0 | 0.00 |
| White kills White | 4059 | 60 | 1.48 |
| Black kills White | 912 | 17 | 1.86 |
| Black male kills White female | 262 | 8 | 3.05 |

Figure 31. Rate of death sentences by race and gender of offender and victim

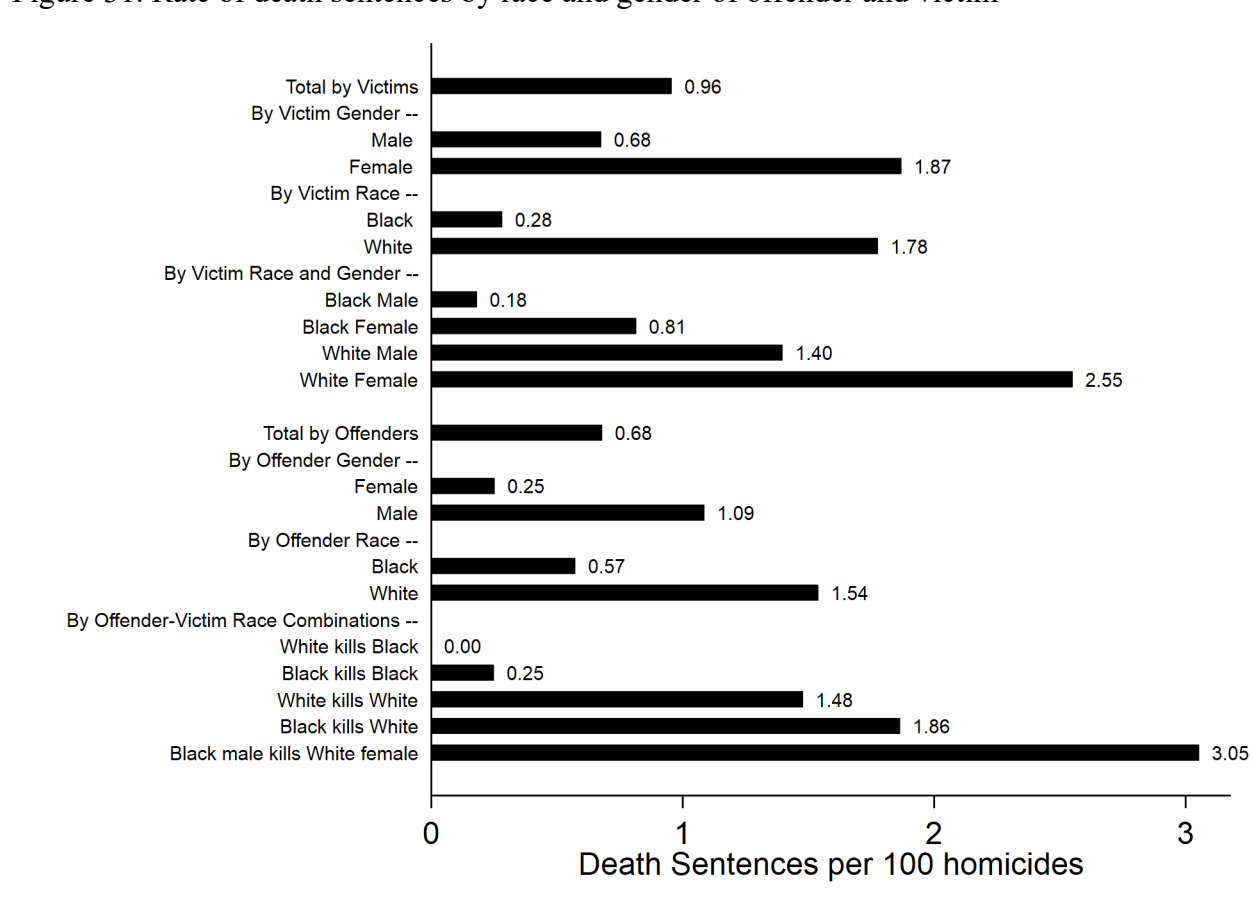
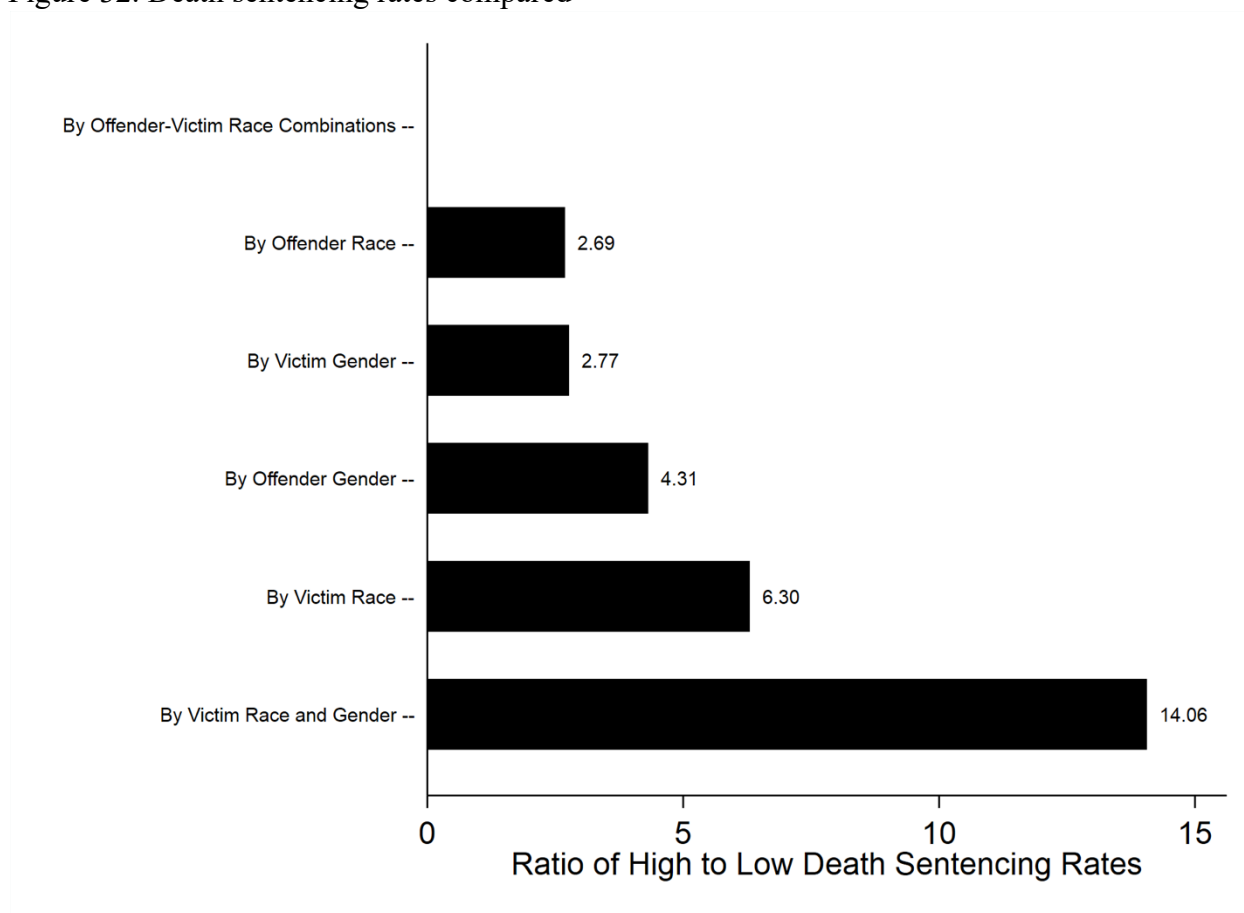


Figure 32 ranks the characteristics of the offender and victim that generate the highest sentencing ratio. For example, a white offender is 2.69 more likely to receive a death sentence than a black offender. An offender with a female victim is 2.77 times more likely to receive a death sentence than an offender with a male victim. An offender with a white female victim is 4.31 times more likely to receive a death sentence than an offender with a black male victim. An offender with a white victim is 6.30 time more likely to receive a death sentence than an offender with a black victim. The largest ratio is generated when we look at all of the factors together, as a black male offender with a white female victim is 14.06 times more likely to receive a death sentence than a black male offender with a black male victim.

Figure 32. Death sentencing rates compared



Indiana Conclusion

Indiana, too, follows this pattern of temporal, geographic, and demographic sentencing disparities.

The question of whether the bivariate statistics presented are indicative of a flaw in the death penalty system or merely due to a spurious correlation can be somewhat resolved through a multivariate assessment of the aforementioned legally irrelevant factors with legally relevant factors, as stated in states' individual statutes. This assessment involves looking at all of the homicide cases and parsing out the details to find the presence of aggravating factors. Performing a study of that magnitude is beyond the scope of this thesis, as it would require an evaluation of the details of every first-degree homicide in each of the states evaluated in the

thesis, but, in the past, groups of other social scientists have conducted these studies for several other states. We will now delve into several examples of these studies and their findings to show that, in fact, the bivariate summary statistics in the cases that have been previously examined are not tainted by spuriousness and therefore, there is no reason to believe that such a random correlation exists within the states studied in this thesis.

Multivariate Assessments of Legally Relevant and Legally Irrelevant Factors Predicting Which Homicide Offenders are Sentenced to Death

Origin of the Baldus Study

The Baldus study came to prominence after David C. Baldus published his “Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience” in 1983. This extensive study set out to analyze the question of proportionality, whether death sentences were consistent with the usual pattern of sentencing in similar cases, for the state of Georgia. This proportionality encompasses both the details of the case and the defendant to evaluate if the sentence was doled out in a constitutional and fair manner. This study was done in light of the Supreme Court’s suggestion that proportionality review could serve as an important protection against arbitrary and capricious death sentences. At its core, the Baldus study is meant to see if death sentences, the harshest punishment that can be given, are being reserved for the most heinous crimes being committed (Baldus et al., 1983). If a defendant is sentenced to death in one crime and in a similar crime the defendant is given a lesser sentence, the death sentence is considered comparatively excessive and there is a violation of the Eighth Amendment, which protects against cruel and unusual punishment.

The height of the Baldus study’s recognition came during the Supreme Court hearing of *McCleskey v. Kemp*. The defendant was convicted of armed robbery and the murder of a police officer during the aforementioned robbery. After being sentenced to death in the state of Georgia,

the defendant appealed to the Federal District Court under the notion that the state's system of capital sentencing was racially discriminatory and violated the Eighth and Fourteenth Amendments. In this appeal the Baldus study, which showed that sentencing patterns were heavily influenced by the victim's race and the defendant's race, was presented. The original Baldus study examined over 2,000 murder cases along with the racial data of the victim, offender, and the combination of the two. This study found that black defendants with white victims were most likely to receive the death penalty. Although the Court accepted the results of the study, it rejected the conclusion that there was unconstitutional discrimination in the State's sentencing under the Fourteenth Amendment and insufficient arbitrariness and capriciousness under the Eighth Amendment.

Despite the ultimate rejection of this initial Baldus study by the United States' Supreme Court, many have attempted to replicate his methodology and have yielded similar results when evaluating the proportionality of death sentences within a state. These proportionality reviews, based off of the initial study, have become known as Baldus studies, although David Baldus did not directly conduct the research.

Small Percentage of Death-Eligible Crimes Result in a Death Sentence

An obvious critique of my study is that the crimes that have resulted in death sentences and executions are in fact the most heinous crimes. The interaction between race, gender, geography, and year are merely a spurious correlation between the most disturbing first-degree homicides. This has been proven false through a series of Baldus studies. I was not able to conduct my own Baldus study for my thesis, as it is extremely time consuming and has only been performed a small number of times, since these studies require the review of all capital eligible crimes, not only those that resulted in a death sentence.

The majority of first-degree murders within a state are death-eligible. Although the actual percentage varies from state to state because of the different statutes and aggravators listed, the number remains relatively high. In California, for example, Steven Shatz and Nina Rivkind found in their 1997 Baldus-type study that 87 percent of all first-degree murders between 1988 and 1992 were death eligible. This was due to two broad aggravators: the statutes of “lay in wait” and “felony was committed during the course of murder.” In 74 percent of all death judgment cases during this study, the “felony murder” aggravator was present. Despite such a large percentage of death-eligible crimes, only 9.6 percent of offenders were actually sentenced to death.

Similar results have been found in other states. In a 1990 study on Georgia’s death penalty by David Baldus, George Woodworth, and Charles Pulaski, it was found that 86 percent of all murder cases were death-eligible, but in only 41 percent of these cases did the prosecutor seek the death penalty. In only 17 percent of these cases was a sentence of death imposed on the defendant.

This pattern continues in the state of Colorado, as demonstrated by a study done by Marceau, Kamin, and Foglia in 2013. They found that 92 percent of all first-degree murders in the state were death-eligible. However, prosecutors only sought the death penalty in 3 percent of all cases and in only 1 percent of these cases were the charges pursued all the way through trial. Ultimately, only 0.6 percent of all death-eligible cases resulted in a death sentence. *Deadly Justice* cites parallel studies for several other states. See Table 7 for a summary of those findings.

Table 7. Summary of Selected State Studies on Death Eligibility and Sentencing

| Article | State | Percent Death-Eligible | Percent Receiving Death Sentence |
|---------------------------------|----------|------------------------|----------------------------------|
| Marceau, Kamin, and Foglia 2013 | Colorado | 92 | 0.6 |

| | | | |
|-------------------------------------|-----------------|----|-----|
| Shatz and Rivkind 1997 | California | 87 | 9.6 |
| Baldus, Woodworth, and Pulaski 1990 | Georgia | 86 | 17 |
| Baldus, Woodworth, and Pulaski 1990 | New Jersey | - | 6 |
| Barnes, Sloss, and Thaman 2009 | Missouri | 76 | 2.5 |
| Vito and Kiel 1988 | Kentucky | 65 | - |
| Bienen et al. 1988 | New Jersey | 58 | - |
| Murphy 1984 | Cook County, IL | 53 | - |
| Sharma et al. 2013 | Tennessee | 34 | - |
| Paternoster 1983 | South Carolina | 19 | - |

Source: Baumgartner et al., 2018

Heinousness Does Not Determine Sentencing

Although only a small percentage of cases are receiving death sentencing, this does not necessarily mean that the death penalty is reserved for the worst, or most heinous, crimes, which is the purpose of such an extreme sentence. Several studies have actually pointed out that there is little to no correlation between the heinousness of the crime and receiving a death sentence. In 2014, John Donohue of Stanford Law School examined this correlation between the heinousness of crimes and the likelihood of receiving a death sentence by adopting Baldus's methods and applying them to the state of Connecticut. Donohue analyzed all 205 death-eligible crimes in the state and found there was no meaningful difference in the level of heinousness for the crimes that the prosecutors sought the death penalty for and those that they did not. The nine cases that resulted in death sentences were, in fact, not the most egregious crimes. On the contrary, he found that 23 percent of all non-death cases ranked higher in egregiousness than the average death case.

The case study of Connecticut is especially interesting because the state's death penalty statute targets a smaller number of offences for the death penalty than the statutes of other states. In Donohue's study, he found over 4,700 homicides, but only 205 of the convictions were death

eligible. He still found that out of the 205 death-eligible convictions, the 9 individuals sentenced to death did not commit more heinous or aggravated crimes than the 197 individuals who received lighter sentences. This shows that even in a state with a narrower scope of which crimes are considered death-eligible, there is still failure to ensure proportionality in sentencing for the death-eligible offenders.

A similar study was conducted in 2016 by Sherod Thaxton for the state of Georgia. Thaxton reviewed the 1,238 homicides in the state from 1993 to 2000, and found strong variation in the probability of a factually similar case, thus comparable in heinousness, being charged capitally. This variation in whether similar cases were charged capitally or not fluctuated greatly based on the discretion of the district handling the prosecution. In some districts, the probability for seeking death in factually similar cases was close to ten percent, but in others the probability raised all the way to fifty percent. Thaxton also modeled how many death sentences the state would have given out based on whether the entire state followed the sentencing patterns of the fifth percentile of likelihood of giving out a death penalty, Cobb Circuit, and if the entire state followed the practices of the ninety-fifth percentile, Griffin Circuit. Following the pattern of Cobb Circuit, the state would have given out 274 death notices, but following the pattern of Griffin Circuit, the state would have given out 681 death notices. This means that a factually similar crime in the Griffin Circuit is 2.5 times as likely to be pursued capitally than in Cobb Circuit.

Although a critique of this thesis could be that the more heinous crimes could be occurring within these demographics, whether it be race, gender, geographic location within a state, or year, the studies above show that this is, in fact, not the case. Factually similar crimes yield different sentences because of these groupings, not in spite of them.

Discussion

For the United States as a whole and for each of the five states that we were able to take a deeper dive into their sentencing patterns because of available data, we find parallel patterns in the fluctuation in annual death sentences, which creates a temporal sentencing disparity, geographic fluctuation in sentencing from county to county within a state and fluctuation in sentencing per 100 homicides, resulting in a geographic sentencing disparity, and similarly problematic patterns in sentencing based on the race and gender of the offender and victim, pointing to race and gender sentencing disparity.

Temporal Disparity

The raw number of annual sentences given out by each state varies greatly, as Texas peaks with a high of 49 death sentences in a single year while Indiana peaks with 9 death sentences in a single year, but the variation within the state follows a similar pattern across states. This means that within a state, sentences tend to be higher in the two decades that the death penalty is reinstated in the state and usually peak with the annual high in the either late 1980s or late 1990s. We consistently see the number of annual sentences decline at the turn of the twenty-first century and remain consistently low to the modern day. Even in states where the number of annual sentences was never high, there is still an apparent decline in number of annual sentences that highlights this temporal disparity.

Equal protection under the law would eliminate the temporal disparity we consistently see across states. The severity of crimes does not fluctuate so much so over a time period that would account for these stark differences in the annual number of sentences, but rather, the changing number of sentences are a reflection of the time period and how we as a society view crime and how crime is prosecuted in the era. We see the majority of sentences being given out from the late 1980s to the early 1990s because of the tough on crime era. This aligns with the

other prosecutorial trends of the time including longer than ever before, and after, prison sentences. This demonstrates that those sentenced in that time period were afforded less protection under the law because of the other underlying factors of the era.

Geographical Disparity

There is geographical disparity within each of the states based on the total number of death sentences and the rate of death sentences per 100 homicides. In each of the states examined, there are typically three to five counties that give out almost all of the death sentences for that particular state. These counties tend to be ones with major cities and high populations, which results in a high number of homicides and ultimately leads to a higher number of death sentences coming out of those counties. However, the homicide rate and number of death sentences is disproportionate and we actually find that smaller, less populous counties with fewer total death sentences actually sentence homicide offenders at a much higher rate. This creates a clear geographical sentencing disparity within the state and we see this pattern replicated in each of the five states examined.

The geographic disparity exemplified by the number of sentences varying from county to county within a state is problematic, but the more telling, and unconstitutional, piece of the puzzle comes when we examine the variation in sentencing rates per 100 homicides from county to county within a state. If equal protection of the law was upheld, we would expect to see equal sentencing rates in counties. This means that counties with higher homicide rates would have more death sentences and counties with lower homicides rates would have fewer death sentences, but they would be proportionate. We see that the opposite is true and that counties with high homicide rates tend to sentence at a much lower rate than counties with low homicide rates. This means that offenders in counties with high homicide rates are less likely to receive a

death sentence than an offender in a county with a low homicide rate, thus valuing the life of the victim in a low homicide rate county more than in a high homicide rate county.

Race and Gender Disparity

Consistently, from state to state, we see huge fluctuations in the rate of death sentencing per 100 homicides based on the race and gender of the offender and the victim. In each state we see that male offenders and white offenders are most likely to receive death sentences. Additionally, across states, offenders with white victims and female victims are more likely to receive death sentences. The victim gender and race tend to be very strong predictors of whether the offender will receive a death sentence. In all of the states we see that a black male offender with a white female victim is most likely to receive a death penalty.

The race and gender disparities show that our criminal justice system disproportionately punishes black offenders and disproportionately works to avenge white female victims. Black offenders are not afforded the same protection under the law as white offenders and although they account for a small percentage of each of the state's population and homicide offenders, they consistently make up a significant percentage of those sentenced to death.

Conclusion

The existence of sentencing disparities because of year, county, race, and gender violates the Fourteenth Amendment. If there was truly equal protection under the law that protection would remain uniform throughout the years the death penalty has existed and be consistent between geographical location, race, and gender. Unfortunately, we see that is not the case for the modern death penalty system.

Lynching pervaded the nineteenth and twentieth centuries in the United States as a way for the white majority to publicly murder black individuals without due process. Criminal accusations, no matter their legitimacy, could result in a mob forming and ultimately lynching

the accused. Some lynching victims were not even accused of criminal activity; their only supposed crime was breaking social norms or racial expectations. Although lynching has since been outlawed, this template of the white majority using excessive violence to punish black individuals has been replicated in the nation's death penalty system.

The Fourteenth Amendment states “no state shall...deny to any person within its jurisdiction the equal protection of the laws.” This means that within a state a law should be applied uniformly in regards to both geographic location and population demographic. Looking into sentencing patterns of the modern death penalty system, since it was reinstated in 1976 with the *Gregg v. Georgia* ruling, it becomes immediately apparent that this equal protection of the law is violated. Race of the victim and offender weigh heavily in the likeliness of the homicide being prosecuted capitally. Additionally, the rate of usage of the death penalty fluctuates greatly based on year and county. This study has demonstrated the racialized and geographically and temporally disparate sentencing patterns across several states, thus affirming that the death penalty, as used by these states is in violation of the Fourteenth Amendment of the United States Constitution.

The *Furman v. Georgia* ruling initially declared the death penalty's current application unconstitutional on the grounds of its arbitrariness because it was not being reserved for the worst of the worst. Considering the death penalty, statistically, may actually be being reserved for black offenders who kill white victims, the United States would essentially be using state sanctioned violence to repeat its history of lynching on a new generation.

The Constitution guarantees that citizens will receive equal protection under the law, but the temporal, geographical, and racial sentencing gaps demonstrate that the American death penalty system does not uphold this constitutional right. In a properly functioning death penalty

system usage of the death penalty would not fluctuate over time, there would be an equal rate of usage per 100 homicides, and blacks and white would be sentenced at equal rates. Furthermore, the high rates of reversal seen on each state's death row demonstrates the general dysfunction in sentencing. These clear violations of the Fourteenth Amendment ought to be considered before deciding whether these states can legally continue operating their death rows.

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