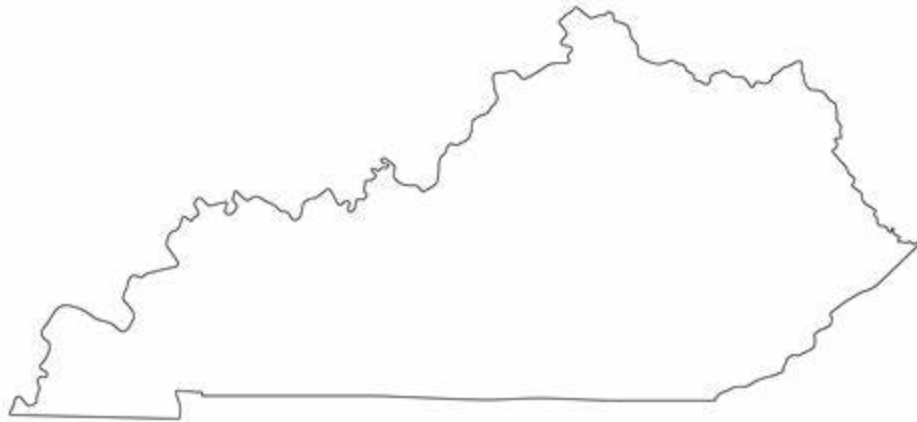


**A Review and Report
on the Status of the Recommendations Made by
the Kentucky Death Penalty Assessment Team**

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*An Analysis of Kentucky's Death Penalty Laws, Procedures and Practices
by Current and Former Kentucky Public Defender Leaders
Nine Years after an Independent and Comprehensive Statewide Program Audit
of the Administration of the Death Penalty in the Commonwealth of Kentucky*



February 2020

Executive Summary

Kentucky was put on notice in 2011 that its death penalty process was systematically malfunctioning. The Kentucky Death Penalty Assessment Team issued a comprehensive Report with specific findings and ninety-three (93) corresponding recommendations.¹ In the ensuing nine years, the following facts are noteworthy:

- Kentucky continues to experience an exceptionally high error rate in its death sentencing process;
- Seven death sentences have been reversed or lifted² from defendants;
- Kentucky courts have imposed two additional death sentences on defendants;
- Kentucky has not executed anyone sentenced to death;
- Considerable disparity continues to exist by county in the imposition of death sentences;
- Kentucky spends an inordinate amount of money that it does not have to implement a flawed and costly³ death penalty process; and
- Kentucky has not taken significant steps to implement the ninety-three (93) Recommendations made to ensure the death penalty is administered fairly according to national standards and protocols.

In light of developments in the law and science since the 2011 Report, the American Bar Association has added another national Recommendation, *i.e.*, states should prohibit death as a possible punishment for a person aged 21 years or under at the time of the charged offense.

To date, these Recommendations have not been fully and properly reviewed or acted upon by any branch of state government. This fact alone calls into question the legitimacy of continuing to seek the death penalty in statutorily eligible cases in the Commonwealth of Kentucky, let alone the imposition of capital punishment. Over the course of four decades, ample evidence has accrued indicating that Kentucky does not have a system that fairly and reliably assures who should be executed, which has created a real risk of executing the innocent, compromised the credibility of our courts and the outcomes of the judicial process, and robbed the rest of the criminal justice system of funds that could be used productively to protect the safety of Kentuckians and address other societal ills. Under these circumstances, ignoring the well-documented, authoritative findings and sound recommendations of such a respected, learned and balanced group of legal professionals cannot be justified.

Accordingly, the undersigned current and former public defender leaders, with nearly 200 years of experience in the practice of criminal law, have undertaken an analysis and update of the status of the statewide administration of the death penalty since the 2011 release of the Kentucky Death Penalty

¹ See “Evaluating Fairness and Accuracy in State Death Penalty Systems: Kentucky Assessment Report,” (2011) found at: https://www.americanbar.org/groups/crsj/projects/death_penalty_due_process_review_project/state_death_penalty_assessments/kentucky/

² “Lifted” includes clemencies, reversals and renegotiated sentences resulting from post-conviction proceedings.

³ The cost to the courts, prosecutors, and defense of litigating death penalty cases in Kentucky is high. It is undisputed that prosecuting a homicide as a death penalty case greatly increases the cost to the court, the prosecution, the defense, and the taxpayers of Kentucky. Further, it substantially delays the ultimate resolution of the case. These costs are frontloaded. See [March 2012 Dick Dieter testimony to KY Judiciary Committee](#). Most capital prosecutions do not result in death sentences and those that do are most frequently reversed. Of the cases reversed, 70% resulted in a non-death sentence when remanded. Because capital prosecutions are so time-consuming, judges are unable to efficiently resolve other important civil and criminal cases on their dockets. This exacerbates the waste of time and resources. Our estimate is that \$3 to \$4 million each year is spent by public defense on capital representation, an equal amount by prosecutors, and \$1-2 million by the courts. At \$10 million per year since 1976, some \$440 million has been spent, or the equivalent of \$146 million per execution.

Assessment Team’s Report. Beginning in 1972, public defenders have represented clients charged with capital offenses at trial, on appeal and in post-conviction proceedings. They have advocated for public policies to advance and ensure the fair administration of the death penalty in the court system. These decades of statewide litigation experience and public policy advocacy, along with a careful review of the Report and relevant data, form the basis of our professional judgment on this subject.

Nine-Year Update

In 2009, an impartial, independent group of respected legal professionals was assembled to evaluate the administration of the death penalty in Kentucky in comparison to national standards.⁴ The Kentucky Death Penalty Assessment Team consisted of two retired Kentucky Supreme Court Justices who had administered the death penalty at the trial and appellate levels, a former chair of the House Judiciary Committee of the Kentucky General Assembly, and several distinguished law professors and bar leaders. From 2009 – 2011, the Kentucky Death Penalty Assessment Team conducted a comprehensive evidence-based analysis of the manner in which the death penalty is administered in Kentucky.

The Kentucky Death Penalty Assessment Team’s 438-page Report considered all death penalty cases prosecuted in Kentucky since 1976 and identified thirteen (13) areas in which Kentucky’s death penalty system falls short in the effort to afford every capital defendant with fair and accurate procedures in the investigative, charging, trial and appellate stages, and thereby minimize the risk of executing the innocent. The number of Recommendations made per chapter were:

Chapter	Title	Recommendations
2	Collection, Preservation & Testing of DNA and Other Types of Evidence	4
3	Law Enforcement Identifications and Interrogations	9
4	Crime Laboratories and Medical Examiner Offices	2
5	Prosecutorial Professionalism	6
6	Defense Services	5
7	The Direct Appeal Process	1
8	State Post-Conviction Proceedings	12
9	Clemency	11
10	Capital Jury Instructions	7
11	Judicial Independence	6
12	Racial and Ethnic Minorities	10
13	Mental Retardation, Mental Illness, and the Death Penalty	20
Total Number of Recommendations =		93

⁴ The Assessment Team was established under a project of the American Bar Association that was created in 2001 to collect and monitor data on domestic and international death penalty developments. The Kentucky review, which began in late 2009, was the project’s ninth state-level assessment.

The ninety-three (93) Recommendations issued were intended to address each of the problems identified in the Assessment Report. The Kentucky capital punishment system has many interconnected parts, and the harms are cumulative. Deficiencies in one area undermine proper procedures in other areas.⁵ The 2011 Recommendations include:

- Kentucky must guarantee proper preservation of all biological evidence in capital cases, and courts should order DNA testing if the results could create a reasonable probability that a defendant should not have been sentenced to death.
- Law enforcement training and practices should comport with well-known best practices to promote apprehension of the guilty and prevent conviction of the innocent.
- Kentucky should adopt statewide standards governing the qualifications and training required of defense attorneys in capital cases.
- Kentucky should provide additional funding to ensure defense attorneys who represent indigent capital defendants are paid at a rate to ensure the high-quality provision of legal services in such complex and demanding cases as a death penalty case.
- Guidelines governing the exercise of prosecutorial discretion in death penalty cases should be adopted for statewide application.
- Kentucky should establish a statewide clearinghouse to collect data on all death eligible cases.
- Kentucky's post-conviction rules and practices should be amended to permit adequate development and consideration by the courts of an inmate's claims of constitutional error.
- To improve death penalty juror comprehension, the state must revise the jury instructions typically given in capital cases.
- Shortcomings of the Kentucky Racial Justice Act must be corrected to ensure that the Act serves as an effective remedy for racial discrimination in death penalty cases.
- Kentucky should adopt legislation exempting the severely mentally ill from the death penalty.⁶

Several of the areas identified in the 2011 Report which are in need of immediate reform deserve special emphasis based upon our review of the data and our collective experience as public defenders:

Ensure comprehensible jury instructions in death penalty cases to avoid trials with jurors who do not fully understand their constitutional obligations. The level of education necessary to fully understand and accurately apply Kentucky capital jury instructions ranges from 12.6 – 23.8 grade level. Empirical data shows Kentucky capital jurors have a poor understanding of the instructions, especially as they pertain to mitigating circumstances:

- Nearly half failed to understand that they could consider anything in mitigation;
- Over 60% failed to understand that they need not find mitigation beyond a reasonable doubt;
- Over 80% failed to understand that the jury did not need to be unanimous in its interpretation of mitigating evidence;
- 15% failed to understand that they must find aggravation beyond a reasonable doubt.⁷

⁵ Kentucky Assessment Team Report (2011), p. iv.

⁶ See https://www.americanbar.org/content/dam/aba/administrative/death_penalty_moratorium/ky_assessment_final_release.pdf

⁷ Marla Sandys, Ph.D. "Misunderstanding of Capital Instructions: Clarification is Possible" published at: https://www.americanbar.org/content/dam/aba/administrative/individual_rights/dp_sands_misunderstanding_capital_instructions.authcheckdam.pdf and reprinted in The Advocate (August 2014) found at: <http://dpa.ky.gov/NR/rdonlyres/07572EE0-EC4F-4AAD-8CF8-A938C0397EC0/0/AdvocateAugust2014FINALreduced.pdf>

Kentucky should not prosecute and seek the death penalty for those who are severely mentally ill, and judges should be authorized to prohibit prosecutors from seeking a death sentence for the severely mentally ill prior to trial, similar to the authority for those who are intellectually disabled. Since 1990, Kentucky has prohibited prosecuting a person who has a serious intellectual disability (KRS 532.140). However, Kentucky does not prohibit prosecuting a person for the death penalty who is severely mentally ill. In 2006, the American Bar Association adopted [Resolution 122A](#). It stated, "Defendants should not be executed or sentenced to death if, at the time of the offense, they had a severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences or wrongfulness of their conduct, (b) to exercise rational judgment in relation to conduct, or (c) to conform their conduct to the requirements of the law...." This exclusion assures that the penalty of death is not imposed on those who do not have sufficient culpability and who are not able to be deterred.

Prohibiting execution of seriously mentally ill defendants is called for by important national mental health leaders, including The National Alliance on Mental Illness, The American Psychiatric Association policy on Diminished Responsibility in Capital Sentencing (2014), and the American Psychological Association (2006).

The public broadly opposes the death penalty for the seriously mentally ill. Polling indicates that 82% of Kentuckians oppose death as a sentence for the seriously mentally ill. The opposition is across all political and demographic groups.⁸

⁸ The poll was conducted by Mason-Dixon Polling & Strategy, Inc. of Jacksonville, Florida from December 12 through December 15, 2018. A total of 625 registered Kentucky voters were interviewed statewide by telephone. Those interviewed were randomly selected from a phone-matched Kentucky voter registration list that included both land-line and cell phone numbers. Quotas were assigned to reflect voter registration by county. The margin for error, according to standards customarily used by statisticians, is no more than ± 4 percentage points. This means that there is a 95 percent probability that the "true" figure would fall within that range if all voters were surveyed. The margin for error is higher for any subgroup, such as a gender or party grouping.

QUESTION: Do you support or oppose the death penalty for persons with severe mental illness?

	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
STATE	11%	82%	7%
<u>REGION</u>	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
Louisville Metro	7%	88%	5%
Lexington/Blue Grass	11%	85%	4%
Northern Kentucky	11%	81%	8%
Eastern Kentucky	12%	78%	10%
Western Kentucky	14%	78%	8%
<u>SEX</u>	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
Men	16%	80%	4%
Women	6%	84%	10%
<u>AGE</u>	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
18-34	8%	86%	6%
35-49	10%	83%	7%
50-64	12%	80%	8%
65+	13%	81%	6%
<u>PARTY REGISTRATION</u>	<u>SUPPORT</u>	<u>OPPOSE</u>	<u>UNDECIDED</u>
Democrat	10%	85%	5%
Republican	12%	79%	9%
Independent	10%	82%	8%

These polls are consistent with national opposition.⁹

It should be noted that, in 2019, SB 17 (with bipartisan sponsorship) prohibited seeking the death penalty for the severely mentally ill. It passed out of the Kentucky Senate Judiciary Committee despite opposition by prosecutors.¹⁰ In 2020, HB 237 has been introduced and has bipartisan sponsorship.¹¹

Racial discrimination in the administration of Kentucky’s death penalty must be addressed in light of the lack of data collection and the unavailability of effective remedies. The Kentucky Assessment Team identified the deficiencies and the need for remedial action to eradicate racial discrimination. “Numerous empirical studies, including one commissioned by the Kentucky General Assembly, have shown that the Commonwealth is more likely to seek the death penalty when the offender is black and the victim is white, and that a death sentence is more likely to be imposed on black offenders convicted of killing a white victim. In response to such findings, in 1998, Kentucky became the first state in the United States to adopt a Racial Justice Act (KRJA), which permits capital defendants to raise, during pretrial proceedings, a claim that the

⁹ A November 2014 poll by Public Policy Polling found that Americans oppose the death penalty for persons with mental illness by a margin of 2 to 1. Fifty-eight percent of respondents said they opposed the death penalty for persons with mental illness, while only 28% favored it. Opposition was consistent across all political parties, with a majority of Democrats (62%), Republicans (59%), and Independents (51%) all indicating they opposed the death penalty for the mentally ill, and across all regions of the country. *See* https://drive.google.com/file/d/0B1LFfr8lqz_7RDJBZzA2NGJzWG8/view

¹⁰ See SB 17 (2019) with its legislative history at: <https://apps.legislature.ky.gov/record/19rs/sb17.html>

¹¹ See HB 237 (2020) with its legislative history <https://apps.legislature.ky.gov/record/20rs/hb237.html>

Commonwealth sought the death penalty against the defendant based, in part, on the race of the defendant and/or race of the victim. The Act requires the trial court to remove the death penalty as a sentencing option if the defendant is successful under the KRJA.”¹²

“While the adoption of the KRJA is laudable, the Act appears to have a number of limitations. For example, the KRJA

- is not applicable retroactively and, therefore, is unavailable to inmates who were sentenced to death prior to the Act’s adoption in 1998;
- does not to permit a capital defendant or death row inmate to raise a claim of racial discrimination in the decision to impose the death penalty;
- requires a capital defendant to raise a KRJA claim before trial rather than permitting an inmate to raise the claim at any stage of the capital proceedings, including on appeal or during post-conviction proceedings;
- requires a capital defendant to prove racial discrimination by clear and convincing evidence, rather than by a preponderance of the evidence; and
- does not permit a capital defendant or death row inmate to prevail under the KRJA if s/he is able to demonstrate that racial considerations played a significant part in the decision to seek or impose a death sentence in the county, judicial district, or the Commonwealth; instead, the KRJA requires the defendant to demonstrate evidence of racial discrimination in the defendant’s individual case.”¹³

“Furthermore, like claims under the KRJA, claims challenging the Commonwealth’s use of peremptory challenges on the basis of race (Batson challenges) and claims challenging the racial composition of the jury pool are procedurally barred on appeal unless raised prior to trial.”¹⁴

“In addition, no entity within the Commonwealth collects and maintains data on the race of defendants and victims, on the circumstances of the crime, on all aggravating and mitigating circumstances, and on the nature and strength of the evidence for all potential capital cases. Without these data, Kentucky cannot guarantee that its system ensures proportionality in charging or sentencing, nor can it determine the extent of racial or ethnic bias in its capital system. This lack of data collection and reporting on the overall use of capital punishment in Kentucky makes it impossible for the Commonwealth to determine whether such a system is operating effectively, efficiently, and without bias.”¹⁵

“Since the adoption of the KRJA, the Commonwealth has undertaken a number of investigations into racial disparities in the criminal justice system and perceptions of racial bias in the judicial system by court-users. However, Kentucky has not investigated or adopted any specific remedial or preventative strategies to address racial disparities in capital charging or sentencing since the 1998 adoption of the KRJA.”¹⁶

Each and every Commonwealth Attorney’s office should have written policies governing the exercise of prosecutorial discretion to ensure the fair, efficient and effective enforcement of criminal law. The 2011 Kentucky Assessment Team Report identified problems in Kentucky’s charging process because of inconsistent and disproportionate capital charging and sentencing. “With fifty-seven (57) Commonwealth’s Attorneys offices in Kentucky, there are conceivably fifty-seven different approaches to the decision to seek

¹² Kentucky Assessment Report (2011), p. xxxvi.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*, pp. xxxvi – xxxvii.

capital punishment. In some instances, it appears that the Commonwealth's Attorney charges every death-eligible case as a capital case. While the vast majority of Commonwealth's Attorneys may seek to exercise considered discretion in death penalty cases in an effort to support the fair, efficient, and effective enforcement of law, there is no mechanism in place to guide prosecutors in their charging decisions to ensure even-handed, non-discriminatory application of the death penalty across the Commonwealth."¹⁷

"Kentucky imposes no requirement on Commonwealth prosecutors to maintain written policies governing the exercise of prosecutorial discretion in capital cases, nor must prosecutors maintain policies for evaluating cases relying upon eyewitness identification, confessions, or jailhouse snitch testimony evidence which constitutes some of the leading causes of wrongful conviction. Death sentences imposed in cases in which the prosecution has significantly relied upon this sort of evidence underscores the need for prosecutors to adopt policies or procedures for evaluating the reliability of such evidence."¹⁸

"While the vast majority of prosecutors are ethical, law-abiding individuals who seek justice, our research revealed inefficient and disparate charging practices among some Commonwealth's Attorneys, as well as instances of reversible error due to prosecutorial misconduct or error in death penalty cases. In addition, the large number of instances in which the death penalty is sought, as compared to the number of instances in which a death sentence is actually imposed, calls into question whether current charging practices ensure the fair, efficient and effective enforcement of criminal law. This places a significant burden on Commonwealth courts, prosecutors, and defenders to process and treat as capital cases many that will never result in a death sentence, taxing the Commonwealth's limited judicial and financial resources."¹⁹

As the Kentucky Assessment Team 2011 Reported found, there "is also geographic disparity with respect to capital charging practices and conviction rates in Kentucky."²⁰

This disparity is unacceptable and demands attention. As indicated in the Table in Appendix 3, between 1976 and 2019 there were 97 trials which resulted in 163 death sentences for 78 people.

The 78 people who were sentenced to death in Kentucky between 1976 and 2019 resulted from a total of ninety-seven (97) trials. Forty-four (44) of Kentucky's 97 death sentences were tried in Jefferson, Harlan, Fayette, Laurel and Warren. That means 45% of the death sentences imposed in Kentucky since 1976 were tried in just five counties. Of those forty-four (44) sentences, nineteen (19) were overturned on appeal, a reversal rate of 43%. Of note, while Warren County juries have recommended death in three cases from outside of the county, they have never recommended death for a case originating in Warren County.

Only 38 of 120 counties have obtained at least one death sentence, meaning that 76% of Kentucky jurisdictions have never obtained a single death verdict.

To address this disparity, the Kentucky Assessment Team recommends that "each prosecutor's office should have written policies governing the exercise of prosecutorial discretion to ensure the fair, efficient and effective enforcement of criminal law."²¹

¹⁷ Kentucky Assessment Report (2011), p. v.

¹⁸ *Id.* at p. xxi.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at p. 147.

This type of charging process is in place at the national level. The United States Department of Justice has such internal procedures governing death penalty cases.²²

Since the Kentucky Assessment Team 2011 Report, the Jefferson County Commonwealth Attorney's homicide charging process has changed. The Jefferson County Commonwealth's Attorney has adopted a practice analogous to the U.S. DOJ protocol. This practice is responsive to the 2011 Recommendation. The waste in Jefferson County has been reduced as the number of death prosecutions has declined based on the individual factors of each case. This new practice resolves cases sooner and benefits the courts, prosecutors, public defenders and taxpayers. All other Kentucky Commonwealth's Attorneys should undertake a protocol similar to the United States Department of Justice policy.

No executions since 2011

When the Kentucky Assessment Team Report was issued in 2011, it called for Kentucky to temporarily suspend executions until the serious issues that were identified relating to fairness and accuracy in the imposition of death sentences were addressed.

While there is no formal suspension in Kentucky, there has been a functional suspension of executions because of the ongoing litigation concerning lethal injection.²³ We commend Kentucky for not executing anyone sentenced to death since the 2011 Report and Recommendations were issued. However, if the death penalty is not abolished, there should be a formal suspension of executions until the 2011 Recommendations are implemented.

Such a moratorium is supported by Kentuckians. In a November – December 2011 poll, a solid majority of Kentucky voters (62%) supported a temporary halt to executions in Kentucky, including 44% who supported it strongly. A temporary halt to executions in Kentucky also was supported across partisan lines. Republican voters supported the halt by a 10-point margin (52% support, 42% oppose), independents supported it by a 16-point margin (54% to 38%), and Democrats supported it by a 52-point margin (73% to 21%).²⁴

Kentuckians support for a temporary halt of executions has increased. A March 30, 2016 poll of Kentuckians found that 72.4% supported a halt of all executions until the problems are addressed.²⁵

The 2011 Recommendations have not been implemented

Legislative efforts to implement the Recommendations

In 2012, there was a hearing in the House and Senate Judiciary Committees on the ABA Kentucky Death Penalty Assessment Team's Recommendations.

On February 27, 2012, Representative Jesse Crenshaw introduced HCR 173²⁶ which would have created a Kentucky Death Penalty Reform Implementation Task Force to develop a strategy to implement the reforms

²² U.S. *Justice Manual*, 9-10.000 – Capital Crimes found at: <https://www.justice.gov/jm/jm-9-10000-capital-crimes>

²³ *Baze et. al. v. Kentucky Dept. of Corrections et. al.*, Franklin Circuit Court Case No. 06-CI-574.

²⁴ See

https://www.americanbar.org/content/dam/aba/administrative/death_penalty_moratorium/memo_aba_lake_research.pdf

²⁵ <https://files.deathpenaltyinfo.org/legacy/documents/KentuckyPollPR.pdf>

²⁶ A CONCURRENT RESOLUTION establishing a task force to develop a plan to implement the recommendations of the American Bar Association's Kentucky Death Penalty Assessment Report, found at:

<https://apps.legislature.ky.gov/record/12rs/hcr173.html> Its co-sponsors were: J. Crenshaw, K. Flood, D. Floyd.

recommended by the American Bar Association's Kentucky Death Penalty Assessment Report. It had Republican and Democrat co-sponsors. It passed the House 73-18 on March 22, 2012, and then was referred to the Senate Judiciary Committee on March 23, 2012. It received an informational hearing in Senate Judiciary, but it was never called for a vote in the Senate Judiciary Committee.

Senator Robin Webb introduced a bill in both the 2013 (SB 86)²⁷ and 2014 (SB 202)²⁸ sessions to enact recommended reforms. The bills were not called for either an informational hearing or for a vote. These bills addressed the following:

- Improvements in the collection, preservation, and testing of DNA and other types of evidence
- Law enforcement identifications and interrogations
- Crime laboratories and medical examiner offices
- Prosecutorial professionalism
- Defense services
- Direct appeal process
- State post-conviction proceedings
- Clemency process
- Jury instructions
- Matters relating to judicial independence
- Treatment of racial and ethnic minorities
- Mental retardation and mental illness issues

Despite opposition by prosecutors, the 2013 General Assembly passed legislation to expand the right of some convicted defendants to DNA testing.²⁹

Judicial efforts to implement the Recommendations

The Kentucky Supreme Court considers changes to its Rules of Criminal Procedure through a committee that is chaired by a Justice of the Supreme Court and that has members of the prosecution, defense, judiciary and circuit court clerk's office. The committee meets every two years and the Supreme Court considers changes to the criminal rules once every two years. The Criminal Rules Committee considered only those Recommendations of the Assessment Team which its Chair deemed relevant to the Judiciary. The committee eventually made Recommendations to the Kentucky Supreme Court for further consideration.

In 2012, the following proposals were made to the Kentucky Supreme Court's Criminal Rules Committee:

- Require timely open file discovery of all non-work product information, RCr 7.25
- Provide for post-conviction discovery, RCr 7.28
- Provide presumptive severance of defendants in capital cases, RCr 9.16
- Require juror questionnaires in capital cases, RCr 9.28
- Expand required individual voir dire in capital cases, RCr 9.38
- Set procedures for admission of eyewitness identifications, RCr 9.78
- Set necessary procedures for use of statements of accused, RCr 9.79
- Preservation of evidence, RCr 13.15

²⁷ AN ACT relating to crimes and punishments, found at: <https://apps.legislature.ky.gov/record/13rs/sb86.html> It had bipartisan co-sponsorship, R. Webb, W. Blevins Jr., P. Clark, J. Higdon, G. Neal, K. Stein.

²⁸ AN ACT relating to crimes and punishments, found at: <https://apps.legislature.ky.gov/record/14rs/sb202.html>

²⁹ House Bill 41, AN ACT relating to DNA with sponsors of J. Bell, J. Jenkins, J. Richards, found at: <https://apps.legislature.ky.gov/record/13rs/hb41.html#SCS1> It passed the House 96-0 and the Senate 38-0. There was a companion bill in the Senate, Senate Bill 23 with sponsors J. Schickel, J. Rhoads, K. Stein, R. Webb, found at: <https://apps.legislature.ky.gov/record/13rs/SB23.html>

None of these proposals were adopted and implemented.

In meetings during 2014, the Kentucky Supreme Court Criminal Rules Committee considered the 2011 Kentucky Assessment Team's Recommendations that the Justice chairing the Committee deemed relevant to the Judiciary. The committee suggested that the following recommendations, listed below by Chapter, should be sent to the Kentucky Supreme Court for further consideration. The committee Chair forwarded the recommendations to the Supreme Court on September 24, 2014. At the October 2015 meeting of the Supreme Court Rules Committee, the committee Chair reported that the Supreme Court considered the recommendations and declined to advance the recommendations, except for a requirement that evidence in a capital case be retained while the case was pending.

- CHAPTER TWO
Recommendation #1 (Report at 44)—“Preserve all biological evidence for as long as the defendant remains incarcerated.”
Recommendation #2 (Report at 49)—“All biological evidence should be made available to defendants and convicted persons upon request and in regard to such evidence, such defendants and convicted persons may seek appropriate relief notwithstanding any other provision of the law.”
- CHAPTER THREE
Recommendation #7 (Report at 87)—“Whenever there has been an identification of the defendant prior to trial, and identity is the central issue in a case tried before a jury, courts should use a specific instruction, tailored to the needs of the individual case, explaining the factors to be considered in gauging line-up accuracy.”
- COMPOSITE RECOMMENDATION BY COMMITTEE FROM DISCUSSIONS IN REMAINING PARTS OF CHAPTER THREE THROUGH CHAPTER SIX
Recommendation: “That the Commonwealth fully fund our Commonwealth’s Attorneys’ and County Attorneys’ offices, the Department of Public Advocacy, Metro Public Defenders, the Kentucky crime laboratories, as well as the criminal divisions of the Kentucky Attorney General’s Office, as their proficiencies directly impact the reliability of our criminal justice system.”
- CHAPTER TEN
Recommendation #1 (Report at 307): “The Kentucky Supreme Court should work with attorneys, judges, linguists, social scientists, psychologists, and jurors to evaluate the extent to which jurors understand instructions, revise the instructions as necessary to ensure that jurors understand applicable law, and monitor the extent to which jurors understand revised instructions to permit further revision as necessary.”
Recommendation # 5 (Report at 314): “Trial courts should not place limits on a juror’s ability to give full consideration to any evidence that might serve as a basis for a sentence less than death.”
- CHAPTER 13—MENTAL RETARDATION
Recommendation #1 (Report at 402): “Jurisdictions should bar the execution of individuals who have mental retardation based upon a clinical judgment, not solely upon a legislatively prescribed IQ measure, and judges and counsel should be trained to apply the law fully and fairly. No IQ maximum lower than 75 should be imposed in this regard. Testing used in arriving at this judgment need not have been performed prior to the crime.”

- CHAPTER 13—MENTAL ILLNESS

Recommendation #8 (Report at 429): “To the extent that a mental disorder or disability does not preclude imposition of the death sentence pursuant to a particular provision of law, jury instructions should communicate clearly that a mental disorder or disability is a mitigating factor, not an aggravating factor, in a capital case and that jurors should distinguish between the defense of insanity and the defendant’s subsequent reliance on mental disorder or disability as a mitigating factor.”

In 2016, a comprehensive rule to ensure preservation of evidence was proposed. Effective January 1, 2019, the Court adopted RCr 13.15, Biological and chemical evidence,³⁰ which was substantially less than what the proposed rule had set forth.

In 2017, a rule proposal was made to require full, timely disclosure of exculpatory evidence as required by Kentucky Rule of Professional Conduct 3.8, Special responsibilities of a prosecutor.³¹ It was not adopted.

It is quite unfortunate and regrettable that, except for a limited preservation rule, the Kentucky Supreme Court has not implemented Criminal Rules of Procedure that respond to the 2011 Recommendations.

Executive efforts to implement our Recommendations

The 2011 Report recommended that in conformance with the 2009 National Academy of Sciences Report on Forensic Science, the state’s Forensic Laboratory should be housed under the Cabinet for Justice and Public Safety as an entity separate and apart from the Kentucky State Police.³² This could be accomplished through a reorganization by Executive Order. No such reorganization has occurred.

There were a series of Recommendations made in the 2011 Report on the clemency process pursuant to Section 77 of the Kentucky Constitution. There is no indication any have been adopted.

However, Governor Bevin commuted death sentences for two persons on death row, Gregory Wilson, Executive Order 2019-1221 (December 6, 2019) and Leif Halvorsen, Executive Order 2019-1357 (December 9, 2019). This is a significant, positive action by Kentucky’s Chief Executive.

The error rate in capital cases is unacceptable

Between December 1976 and December 2019, 78 people were sentenced to death. 52 of these individuals have had a death sentence overturned on appeal by Kentucky or federal courts, or been granted clemency. Since 1976, 39 of those individuals were removed from death row as a result, with the remaining 13 either getting a new death sentence on re-trial, or having less than all of multiple death sentences vacated. Of the 78 people sentenced to death, 27 remain on death row; 9 others died of natural causes or suicide, and 3 were executed.

³⁰ RCr 13.15 is found at:

[https://govt.westlaw.com/kyrules/Document/N42AA0AD0CC4511E8BB61FA0A5329355C?viewType=FullText&originatio nContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/kyrules/Document/N42AA0AD0CC4511E8BB61FA0A5329355C?viewType=FullText&originatio nContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

³¹ SCR 3.130(3.8) Special responsibilities of a prosecutor states, “The prosecutor in a criminal case shall:.... (c) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal....”

³² Kentucky Assessment Team Report (2011) at p. 120.

Since the 2011 Report was issued, there have been two additional death sentences handed down in Kentucky: Michael D. St. Clair in 2012 and Larry Lemont White in 2014; and there have been seven death sentences lifted from defendants: Carlos Lamont Ordway in 2013; John Mills in 2014; Michael D. St. Clair in 2015, as well as a second sentence involving Michael D. St. Clair in 2019; Melvin Lee Parrish in 2019; Roger Dale Epperson in 2019; Gregory Wilson in 2019; and Leif Halvorsen in 2019.

This constitutes an error rate in cases involving the ultimate penalty of death that is unconscionable and intolerable. No trial system which produces a result in death penalty cases with this error rate should be viewed as reliable or “working.”

End the death penalty for defendants 21 and under

On February 5, 2018, the American Bar Association House of Delegates voted overwhelmingly to adopt a Resolution³³ calling for an end to the death penalty for offenders who were 21 years of age or younger at the time of the commission of the crime. According to a report accompanying the Resolution, “there is a growing medical consensus that key areas of the brain relevant to decision-making and judgment continue to develop into the early twenties.”

Kentucky should prohibit death as a possible punishment for a person 21 years of age or younger at the time of the charged offense.

The American Law Institute has withdrawn its Model Penal Code provision supporting capital punishment

Kentucky's statutory scheme for capital prosecutions is based on the highly respected American Law Institute's (ALI) Model provision. Significantly, in October, 2009, the ALI withdrew support for its capital punishment provision (MPC § 210.6) from the Model Penal Code in light of what the ALI regards as "the current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment."

In March 2012, Jordon Steiker, University of Texas School of Law, testified to Kentucky's Senate Judiciary Committee on the reasoning for this dramatic ALI decision. He stated that the ALI's withdrawal of “the capital sentencing provision constitutes recognition that the provision has not and cannot satisfactorily solve the problems of arbitrariness and fairness undermining the past and present system of capital punishment. The Institute wished to disassociate itself from the system of capital punishment that its provision had been crucial to sustaining.”

The ALI's withdrawal of support for a fair structure for a death penalty statutory scheme confirms our decades of death penalty experience in Kentucky.

Conclusion:

The administration of the death penalty in Kentucky is broken; the time for corrective action is now.

As current and former Public Defender leaders,³⁴ we have long sought adequate resources for the defense of capital cases, the implementation of national standards of practice in capital cases, and reforms to fix our

³³ Resolution 111 is found at: http://www.abajournal.com/files/2018_hod_midyear_111.pdf

³⁴ Together, we have represented scores of capital clients and have nearly 200 years of experience in criminal law practice and public defender leadership.

malfunctioning system rife with error and injustice. Continuing over several decades, the resources remain inadequate, the national standards have not been adopted, and the egregious error rate persists.

Our first-hand professional experiences are confirmed by the independent Assessment Team's 2011 Findings and Recommendations that the administration of the death penalty in Kentucky is broken.³⁵

We renew our urgent call for judicial, legislative and executive branch leaders to immediately implement the Kentucky Assessment Team's 2011 Recommendations in this matter of life and death. Kentucky must make numerous significant changes in its death penalty process in order to correct documented problems that will increase confidence in the fair and accurate administration of the death penalty. If such action is not taken, the only alternative is to abolish the penalty of death in Kentucky.

Until that happens, Kentucky must suspend executions pending enactment of the reforms necessary to address the serious issues identified in the Report. Defenders issued a call for a moratorium in June 1997 based upon Kentucky's record in capital cases and the American Bar Association Call for a Moratorium, Resolution No. 107 (February 1997). Defenders have repeatedly renewed the call for a formal moratorium.³⁶

Some may discount our recommendations because we speak from our experience and knowledge as public defenders. We invite those who may be tempted to dismiss our views to reflect on the following facts: most Kentucky prosecutors no longer seek the death penalty despite the existence of potential aggravating circumstances; a number of former Kentucky prosecutors have called for the reform of our death penalty process;³⁷ an independent, comprehensive review found systemic defects with the administration of the death penalty in our Commonwealth; virtually none of the Recommendations resulting from that review have been implemented; the error rate in Kentucky continues at an alarmingly high and unacceptable rate; the costly death penalty process deprives Kentuckians of resources that could be used more effectively in the criminal justice system; and the people of Kentucky no longer favor death as a penalty.³⁸ **Further delay in implementing the common-sense reforms recommended in 2011 to assure the fair administration of the death penalty in Kentucky cannot be tolerated. We must act now ... or abolish capital punishment.**

³⁵ *The Death Penalty in Kentucky: the System is Broken*, KBA Bench and Bar (November 2003) pp. 8-13.

³⁶ *The Advocate* Volume 19, No. 4 (July 1997) p. 9-14; Volume 23, No. 1 (January 2001) pp. 52, 53.

³⁷ *Prosecutors: Kentucky capital punishment unfair*, Lexington Herald-Leader, March 7, 2012, p. A 12. "Each of us is a current or former prosecutor, some of whom have prosecuted capital cases in our Commonwealth. As prosecutors, we continue to believe that heinous criminal conduct must be punished severely in a way that advances public safety. However, punishment must be a result of a fair process that produces valid results in which we have full confidence. It is time to suspend executions in Kentucky until the reforms recommended by a groundbreaking professional study are implemented....The hallmark of our criminal justice system is that its process is fair and its results are reliable and accurate. Our reversal rate undermines this hallmark. These troubling issues in capital cases must be addressed, now." This statement was signed by John L. "Jack" Smith, former U.S. Attorney for the Western District of Kentucky; Alexander T. "Sandy" Taft, former U.S. Attorney for the Western District of Kentucky; Stephen B. Pence, former U.S. Attorney for the Western District of Kentucky and former Lt. Governor of the Commonwealth of Kentucky; Marc S. Murphy, former Jefferson County Commonwealth's Attorney; Michael J. "Mike" O'Connell, Jefferson County Attorney; Joe Gutmann, former Jefferson County Assistant Commonwealth's Attorney; Scott C. Cox, former Assistant U.S. Attorney; Larry D. Simon, former Jefferson County Assistant Commonwealth's Attorney; Will Collins, former Letcher County Commonwealth's Attorney; Jeffrey A. Darling, former Fayette County Assistant Commonwealth's Attorney; J. Stewart Schneider, former Boyd County Commonwealth's Attorney.

³⁸ "Widespread support for capital punishment no longer exists" in Kentucky. See Gennaro F. Vito, *Attitudes Toward the Death Penalty in Kentucky: A Comparison of results – 1989, 1997, 1999*, [Kentucky Justice and Public Safety Bulletin, Volume 3, No. 1 \(September 2001\) p 3](#). Recent public opinion polling has reiterated this finding and other findings: a recent poll by the University of Kentucky Survey Research Center gauged Kentuckians' opinions on issues related to the cost of administering capital punishment, the possibility of executing an innocent person and other matters. The poll,

conducted between March 4 and April 30, 2016, included interviews with 684 Kentuckians over the age of 18. Its margin of error was plus or minus 3.8 percent. Its findings are:

- Kentuckians overwhelmingly support a halt to executions until problems with the state's capital punishment system are solved, and most believe that lengthy prison terms, including life without parole, are preferable to the death penalty as punishment for people convicted of first-degree murder.
- Nearly three-fourths of the respondents, 72.4 percent, told interviewers they would support the governor taking such an action. That exceeded the level of support for the death penalty reflected in the poll (69.3 percent). Even among those who support the death penalty, 62.6 percent said there should be a halt in executions until the system's problems are addressed.
- Support for the death penalty also declined when respondents were given a choice of punishments for people convicted of first-degree murder, posed in the following question:
- A query about the high cost of administering the death penalty found 68 percent of the respondents strongly or somewhat support replacing it with life imprisonment without parole.
- The possibility of executing an innocent defendant also concerns most Kentuckians. Overall, 71.6 percent strongly or somewhat agreed that the capital punishment system risks executing the innocent. Of those who support executions, 61.4 percent agreed that there are risks of executing the innocent.
- When considering the negative effect on victims' families of the lengthy capital punishment process in Kentucky, nearly two-thirds of the survey respondents (64 percent) strongly or somewhat agreed that life without parole should replace the death penalty as a punishment.

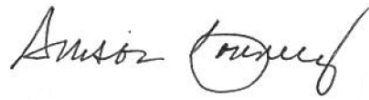
In December 2018 Mason-Dixon Polling and Strategy, Inc., conducted a statewide, telephone poll of 625 registered Kentucky voters. Those interviewed were randomly selected from a phone-matched Kentucky voter registration list that included both land-line and cell phone numbers. Quotas were assigned to reflect voter registration by county. The margin for error is no more than ± 4 percentage points. Kentuckians were given the 5 possible penalties now available under Kentucky law for someone charged with an aggravated murder, making one eligible for the death penalty. Below is the question and the results of the polling.

QUESTION: Which of the following punishments do you personally think is MOST appropriate for persons convicted of aggravated murder in Kentucky:

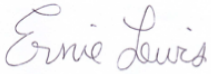
- The death penalty
- Life in prison with no chance of parole
- Life in prison with no chance of parole for 25 years
- Life in prison with no chance of parole for 20 years
- A sentence of 20-50 years with a chance for parole after serving 85% of the sentence

57% of respondents believe lengthy prison terms are the most appropriate penalty for aggravated murderers. Only 38% claim the death penalty as the most appropriate penalty for aggravated murder cases. In another follow-up question 53% said they would support "replacing the death penalty with a sentence of life in prison without the possibility of parole" after they were told of the substantially higher costs of sentencing prisoners to death versus life without the possibility of parole.

Respectfully submitted,



Prof. Allison Connelly, University of Kentucky College of Law
former Kentucky Public Advocate (1992-1996)



Ernie Lewis
former Kentucky Public Advocate (1996-2008)



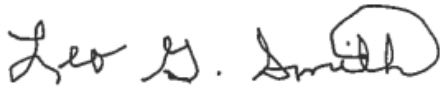
Edward C. Monahan
former Kentucky Public Advocate (2008-2017)



Damon L. Preston
Kentucky Public Advocate (2017-present)



Daniel T. Goyette, Defender Emeritus and former Executive Director (1982-2018)
Louisville-Jefferson County Public Defender Corporation



Leo G. Smith, Executive Director (2018-present)
Louisville-Jefferson County Public Defender Corporation

Appendix

1. Kentucky Assessment Team Members
2. Kentucky death sentences imposed, reversed and commuted, 1976 – 2019
3. Kentucky death sentences by county, 1976-2019

1. Kentucky Assessment Team

In 2009, an impartial, independent group of respected legal professionals was assembled to evaluate the administration of the death penalty in Kentucky in comparison to national standards. The Kentucky Death Penalty Assessment Team consisted of two retired Kentucky Supreme Court Justices who had administered the death penalty at the trial and appellate levels, a former chair of the House Judiciary Committee of the Kentucky General Assembly, and several distinguished law professors and bar leaders.

The Kentucky Assessment Team is composed of the following individuals:

- **Linda Sorenson Ewald**, Co-Chair, Louis D. Brandeis School of Law at the University of Louisville, Louisville, KY;
- **Michael J. Z. Mannheimer**, Co-Chair, Northern Kentucky University Salmon P. Chase College of Law, Highland Heights, KY;
- **Hon. Michael Bowling**, Steptoe & Johnson PLLC, Middlesboro, KY;
- **Allison Connelly**, University of Kentucky, College of Law, Lexington, KY;
- **Hon. Martin E. Johnstone**, Kentucky Supreme Court (Retired), Prospect, KY;
- **Hon. James Keller**, Kentucky Supreme Court (now deceased), Lexington, KY;
- **Frank Hampton Moore, Jr.**, Cole & Moore, P.S.C., Bowling Green, KY; and
- **Marcia Milby Ridings**, Hamm, Milby & Ridings, London, KY.

2. Kentucky Death Sentences Imposed, Reversed & Commuted, 1976 – 2019

# Δs	# death sent. imposed	Name	County of Conv.	County of Offense	DEATH SENTENCES IMPOSED		DEATH SENTENCES AND REVERSALS						Comment	
					Year DP imposed	Direct Appeal Citation	Year DP rev'd	Reversal Citation**	Direct	State PCR	Fed HB	Clemency		Executed
1	1	Robert Lee Askew	Jefferson	Jefferson	1985	768 S.W.2d 51 (Ky. 1989)	1989	768 S.W.2d 51	x					
2	2	Ralph Stephen Baze, Jr.	Rowan	Powell	1994	965 S.W.2d 817 (Ky. 1997)								
3	5	William O. Bevins	Greenup	Floyd	1983	712 S.W.2d 932 (Ky. 1986)								Died (natural) on Row
4	1	Alexander Bowling	Rowan	Rowan	1981	Died prior to Direct Appeal								Died (natural) on Row
5	2	Ronnie L. Bowling	Laurel	Laurel	1992	942 S.W.2d 293 (Ky. 1997)								
6	2	Thomas Clyde Bowling, Jr.	Fayette	Fayette	1991	873 S.W.2d 175 (Ky. 1993)								
7	1	Phillip L. Brown	Warren	Adair	2006	313 S.W.3d 577 (Ky. 2010)	2010	313 S.W.3d 577	x					
8	1	Charles Wayne Bussell	Christian	Christian	1992	882 S.W.2d 111 (Ky. 1994)	2007	226 S.W.3d 96		x				Upholding 2005 per court
9	1	Virginia Susan Caudill	Fayette	Fayette	2000	120 S.W.3d 635 (Ky. 2003)								
10	2	Marco Allen Chapman^	Boone	Boone	2004	265 S.W.3d 156 (Ky. 2007)							11/21/2008	
11	1	Michael Dean Clark	Fayette	Fayette	1987	833 S.W.2d 793 (Ky. 1991)	1991	833 S.W.2d 793	x					
12	2	Teddy Lee Cosby	Jefferson	Jefferson	1986	776 S.W.2d 367 (Ky. 1989)	1989	776 S.W.2d 367	x					1 death sent. for capital kidnapping; Co-defendant is Walls.
13	1	Allen Cushman	Laurel	Laurel	1994	Died prior to Direct Appeal								Died (natural) on Row
14	1	Roy Wayne Dean	Todd	Todd	1985	777 S.W.2d 900 (Ky. 1989)	1989	777 S.W.2d 900	x					
15	6	Kevin Dunlap	Livingston	Livingston	2010	2013 WL 3121689 (not final)								

2. Kentucky Death Sentences Imposed, Reversed & Commuted, 1976 – 2019

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					Year DP imposed	Direct Appeal Citation	Year DP rev'd	Reversal Citation**	Direct	State PCR	Fed HB	Clemency	Executed	
16	1	Roger Dale Epperson	Letcher	Letcher	1986 (1)	809 S.W.2d 835 (Ky. 1990)	2019	11/15/19 Agreed Resentencing Order		x				Co-defendant is Hodge.
	2	Roger Dale Epperson	Harlan	Jackson	1987 (2a)	No. 88-SC- 712 (Ky.)	1991	No. 88-SC-713 (CW motion to remand prior to direct appeal)	x					Co-defendant is Hodge.
	2	Roger Dale Epperson*	Warren	Jackson	2003 (2b)	197 S.W.3d 46 (Ky. 2006)								Tried separately.
17	1	Samuel Stevens Fields	Rowan	Carter	1997	12 S.W.3d 275 (Ky. 2000)	2000	12 S.W.3d 275	x					
	1	Samuel Stevens Fields*	Floyd	Carter	2004	274 S.W.3d 375 (Ky. 2008)								
18	2	Robert Carl Foley	Laurel	Laurel	1993	942 S.W.2d 876 (Ky. 1996)								
	4	Robert Carl Foley	Madison	Laurel	1994	953 S.W.2d 924 (Ky. 1997)								
19	5	LaFonda Fay Foster	Fayette	Fayette	1987	827 S.W.2d 670 (Ky. 1991)	1991	827 S.W.2d 670	x					
20	1	Fred Furnish	Kenton	Kenton	1999	95 S.W.3d 34 (Ky. 2002)	2002	95 S.W.3d 34	x					
	1	Fred Furnish*	Kenton	Kenton	2004	267 S.W.3d 656 (Ky. 2007)								
21	1	Eugene William Gall, Jr.	Boone	Boone	1978	607 S.W.2d 97 (Ky. 1980)	2000	231 F.3d 265 (6th Cir.)			x			
22	3	John Roscoe Garland	McCreary	McCreary	1999	127 S.W.3d 529 (Ky. 2003)								
23	1	Johnathon Wayne Goforth	Fayette	Fayette	2000	120 S.W.3d 635 (Ky. 2003)								
24	1	Fred Grooms	Lyon	Lyon	1985	756 S.W.2d 131 (Ky. 1988)	1988	756 S.W.2d 131	x					
25	2	Randy Winton Haight	Garrard	Garrard	1986	760 S.W.2d 84 (Ky. 1988)	1988	760 S.W.2d 84	x					

2. Kentucky Death Sentences Imposed, Reversed & Commuted, 1976 – 2019

# Δs	# death sent. imposed	Name	County of Conv.	County of Offense	DEATH SENTENCES IMPOSED		DEATH SENTENCES AND REVERSALS							Comment	
					Year DP imposed	Direct Appeal Citation	Year DP rev'd	Reversal Citation**	Direct	State PCR	Fed HB	Clemency	Executed		
	2	Randy Winton Haight*	Jefferson	Garrard	1994	938 S.W.2d 243 (Ky. 1996)									
26	2	Leif C. Halvorsen	Fayette	Fayette	1983	730 S.W.2d 921 (Ky. 1986)						12/9/19			
27	2	Edward Lee Harper, Jr.^	Jefferson	Jefferson	1982	694 S.W.2d 665 (Ky. 1985)							5/25/1999		
28	1	Benny Lee Hodge	Letcher	Letcher	1986 (1)	809 S.W.2d 835 (Ky. 1990)									Co-defendant is Epperson.
	2	Benny Lee Hodge	Harlan	Jackson	1987 (2a)	No. 88-SC- 713 (Ky.)	1991	No. 88-SC-713 (CW motion to remand prior to direct appeal)	x						Co-defendant is Epperson.
	2	Benny Lee Hodge*	Laurel	Jackson	1996 (2b)	17 S.W.3d 824 (Ky. 2000)									Tried separately.
29	1	Jack Joe Holland	Oldham	Oldham	1981	703 S.W.2d 876 (Ky. 1985)	1985	703 S.W.2d 876	x						Co-defendant is James.
30	1	James Hunt	Floyd	Floyd	2006	304 S.W.3d 15 (Ky. 2009)									
31	1	James D. Hunter	Clark	Clark	1991	869 S.W.2d 719 (Ky. 1994)	1994	869 S.W.2d 719	x						
32	1	Todd Ice	Wolfe	Wolfe	1980	667 S.W.2d 671 (Ky. 1984)	1984	667 S.W.2d 671	x						Ice was 15 at time of murder.
33	1	Clawvern Jacobs	Knott	Knott	1989	870 S.W.2d 412 (Ky. 1994)	1994	870 S.W.2d 412	x						
	1	Clawvern Jacobs*	Warren	Knott	1997	58 S.W.3d 435 (Ky. 2001)	2001	58 S.W.3d 435	x						
34	1	Larry James	Oldham	Oldham	1981	703 S.W.2d 876 (Ky. 1985)	1985	703 S.W.2d 876	x						Co-defendant is Holland.
35	1	Donald Herb Johnson	Floyd	Floyd	1997	910 S.W.2d 229 (Ky. 1995)									
36	1	Paul Kordenbrock	Boone	Boone	1981	700 S.W.2d 384 (Ky. 1985)	1990	919 F.2d 1091 (6 th Cir. en banc)			x				

2. Kentucky Death Sentences Imposed, Reversed & Commuted, 1976 – 2019

# Δs	# death sent. imposed	Name	County of Conv.	County of Offense	DEATH SENTENCES IMPOSED		DEATH SENTENCES AND REVERSALS							Comment
					Year DP imposed	Direct Appeal Citation	Year DP rev'd	Reversal Citation**	Direct	State PCR	Fed HB	Clemency	Executed	
37	1	Jeffrey Leonard a.k.a. James Earl Slaughter a.k.a. James Earl Slawter	Jefferson	Jefferson	1983	744 S.W.2d 407 (Ky. 1987)	2007					Granted 12/10/2007		
38	1	Hugh Marlowe	Harlan	Harlan	1982	709 S.W.2d 424 (Ky. 1986)	2001	2006 WL 3386629 (Ky.) (aff'g lower ct)		x				
39	2	David Eugene Matthews	Jefferson	Jefferson	1982	709 S.W.2d 414 (Ky. 1986)								
40	1	Raymond (William) McClellan	Jefferson	Jefferson	1982	715 S.W.2d 464 (Ky. 1986)	1986	715 S.W.2d 464	x					
41	3	Gary Casper McKinney	Pulaski	Pulaski	1998	60 S.W.3d 499 (Ky. 2001)	2001	60 S.W.3d 499	x					
42	1	Harold McQueen	Madison	Madison	1981	669 S.W.2d 519 (Ky. 1984)							7/1/1997	
43	3	William Meece	Warren	Adair	2006	2011 WL 2433733 (Ky.)								
44	1	John Mills	Knox	Knox	1996	996 S.W.2d 473 (Ky. 1999)	2014	2014 WL 2809790 (Ky 2014)		x				
45	1	Brian Keith Moore	Jefferson	Jefferson	1980	634 S.W.2d 426 (Ky. 1982)	1982	634 S.W.2d 426	x					
	1	Brian Keith Moore*	Jefferson	Jefferson	1984	771 S.W.2d 34 (Ky. 1988)								
46	1	Joseph Edward Morris	Harlan	Harlan	1986	766 S.W.2d 58 (Ky. 1989)	1989	766 S.W.2d 58	x					
47	2	Sherman Noble	Jefferson	Jefferson	2005	Died prior to Direct Appeal								Died (natural) on Row
48	1	La Verne O'Bryan	Jefferson	Jefferson	1980	634 S.W.2d 153 (Ky. 1982)	1982	634 S.W.2d 153	x					
49	2	Carlos Lamont Ordway	Fayette	Fayette	2010	319 S.W.3d 762 (Ky.2013)	2013	319 S.W.3d 762 (Ky.2013)	x					
50	2	Larry Osborne	Whitley	Whitley	1999	43 S.W.3d 234 (Ky. 2001)	2001	43 S.W.3d 234	x					

2. Kentucky Death Sentences Imposed, Reversed & Commuted, 1976 – 2019

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					Year DP imposed	Direct Appeal Citation	Year DP rev'd	Reversal Citation**	Direct	State PCR	Fed HB	Clemency	Executed	
51	2	Melvin Lee Parrish	Jefferson	Jefferson	2001	121 S.W.3d 198 (Ky. 2003)		5/2/19 Agreed Resentencing Order		x				
52	1	Tommie Perdue	Russell	Russell	1992	916 S.W.2d 148 (Ky. 1995)	1995	916 S.W.2d 148	x					
53	1	Ernest Arnaze Rogers	Christian	Christian	1996	992 S.W.2d 183 (Ky. 1999)	1999	992 S.W.2d 183	x					
54	1	Parramore Lee Sanborn	Henry	Oldham	1984	754 S.W.2d 534 (Ky. 1988)	1988	754 S.W.2d 534	x					
	1	Parramore Lee Sanborn*	Jefferson	Oldham	1991	892 S.W.2d 542 (Ky. 1994)								
55	2	David Lee Sanders	Madison	Madison	1987	801 S.W.2d 665 (Ky. 1990)								
56	6	Beoria A. Simmons	Jefferson	Jefferson	1985	746 S.W.2d 393 (Ky. 1988)	2010	Killer of 3 wins fight to avoid execution Deal gives Simmons life, Courier-J., March 3, 2010, at B1			x			3 death sent. for capital kidnapping; plea deal due to <i>Batson</i> issue
57	2	David Leroy Skaggs	Barren	Barren	1982	694 S.W.2d 672 (Ky. 1985)	2000	235 F.3d 261 (6 th Cir. 2000)			x			
	2	David Leroy Skaggs*	Barren	Barren	2002	803 S.W.2d 573 (Ky. 1990)								Died (natural) on Row
58	4	David Smith	Pike	Pike	1983	734 S.W.2d 437 (Ky. 1987)								Died (natural) on Row
59	1	Johnny Marshall Smith	Muhlenberg	Muhlenberg	1978	599 S.W.2d 900 (Ky. 1980)	1980	599 S.W.2d 900	x					
60	1	Robert Allen Smith	McCracken	McCracken	1990	845 S.W.2d 534 (Ky. 1993)	1993	845 S.W.2d 534	x					
61	2	Miguel Soto	Oldham	Oldham	2000	139 S.W.3d 827 (Ky. 2004)	2011	No. 99-CR-00041 (Oldham Cir. Ct. Jan. 31, 2011)		x				Sentence only; Pending cert. to Ky. Supreme Court

2. Kentucky Death Sentences Imposed, Reversed & Commuted, 1976 – 2019

# Δs	# death sent. imposed	Name	County of Conv.	County of Offense	DEATH SENTENCES IMPOSED		DEATH SENTENCES AND REVERSALS							Comment
					Year DP imposed	Direct Appeal Citation	Year DP rev'd	Reversal Citation**	Direct	State PCR	Fed HB	Clemency	Executed	
62	1	Kevin N. Stanford	Jefferson	Jefferson	1982	734 S.W.2d 781 (Ky. 1987)	2003					Granted 10/9/2003		
63	1	Michael D. St. Clair	Bullitt	Bullitt	1998 (1a)	140 S.W.3d 510 (Ky. 2004)	2004	140 S.W.3d 510	x					1 death sent. for murder
	1	Michael D. St. Clair	Hardin	Hardin	2001 (2a)	174 S.W.3d 474 (Ky. 2005)	2005	174 S.W.3d 474	x					1 death sent. for capital kidnapping: pending retrial
	1	Michael D. St. Clair*	Bullitt	Bullitt	2005 (1b)	319 S.W.3d 300 (Ky. 2010)	2010	319 S.W.3d 300	x					Resentence for murder
	1	Michael D. St. Clair*	Bullitt	Bullitt	2011 (1c)	451 S.W.3d 597 (Ky. 2014)	2018	9/18/18 Agreed Sentencing Order		x				Resentence for murder
	1	Michael D. St. Clair*	Hardin	Hardin	2012 (2b)	455 S.W.3d 869 (Ky. 2015)	2015	455 S.W.3d 869	x					Returned for 4th capital resentencing
64	1	Vincent Christian Stopher	Jefferson	Jefferson	1998	57 S.W.3d 787 (Ky. 2001)								
65	2	Eugene Frank Tamme	Washington	Washington	1985	759 S.W.2d 51 (Ky. 1988)	1988	759 S.W.2d 51	x					
	2	Eugene Frank Tamme*	Fayette	Washington	1994	973 S.W.2d 13 (Ky. 1998)								Died (natural) on Row
66	4	Victor Dewayne Taylor	Jefferson	Jefferson	1986	821 S.W.2d 72 (Ky. 1990)	1990	821 S.W.2d 72 o						2 death sentences for capital kidnapping overturned
67	1	Alfred Grayson Thomas	Knott	Knott	1988	864 S.W.2d 252 (Ky. 1993)	1993	864 S.W.2d 252	x					
68	1	Eugene William Thompson	Lyon	Lyon	1986	862 S.W.2d 871 (Ky. 1993)	1993	862 S.W.2d 871	x					
	1	Eugene William Thompson*	Lyon	Lyon	1998	56 S.W.3d 406 (Ky. 2001)								
69	2	Christopher Charles Walls	Jefferson	Jefferson	1986	776 S.W.2d 367 (Ky. 1989)	1989	776 S.W.2d 367	x					Co-defendant is Cosby; 1 death sent. for capital kidnapping

2. Kentucky Death Sentences Imposed, Reversed & Commuted, 1976 – 2019

# Δs	# death sent. imposed	Name	County of Conv.	County of Offense	DEATH SENTENCES IMPOSED		DEATH SENTENCES AND REVERSALS						Comment	
					Year DP imposed	Direct Appeal Citation	Year DP rev'd	Reversal Citation**	Direct	State PCR	Fed HB	Clemency		Executed
70	1	Douglas Ward	Clay	Leslie	1983	695 S.W.2d 404 (Ky. 1985)	1985	695 S.W.2d 404	x					
71	2	Roger Lamont Wheeler	Jefferson	Jefferson	2001	121 S.W.3d 173 (Ky. 2003)								
72	3	Karu Gene White	Powell	Breathitt	1980	671 S.W.2d 241 (Ky. 1983)								
73	2	Larry Lamont White	Jefferson	Jefferson	1985	725 S.W.2d 597 (Ky. 1987)	1987	CW motion to vacate and remand for resentencing	x					
	1	Larry Lamont White	Jefferson	Jefferson	2014	544 S.W.3d 125 (Ky. 2017)								
74	2	Mitchell L. Willoughby	Fayette	Fayette	1983	730 S.W.2d 921 (Ky. 1986)								
75	2	Gregory Wilson	Kenton	Kenton	1988	836 S.W.2d 872 (Ky. 1992)	1992	836 S.W.2d 872				12/9/19		Only 2nd death sent. for capital kidnapping overturned; Co- defendant is Humphrey (life)
76	2	Shawn Windsor	Jefferson	Jefferson	2006	2010 WL 3374240 (Ky.)								
77	1	Robert Keith Woodall	Caldwell	Caldwell	1998	63 S.W.3d 104 (Ky. 2001)								
78	1	Gerald Young	Fayette	Fayette	1998	50 S.W.3d 148 (Ky. 2001)	2001	50 S.W.3d 148	x					

3. Kentucky death sentences by county

County	# of Death Penalty Trials Reversed	# of Death Penalty Trials Not Reversed
Adair		
Warren	1	1
Barren		
Barren	1	1
Boone		
Boone	2	1
Breathitt		
Powell	0	1
Bullitt		
Bullitt	3	0
Caldwell		
Caldwell	0	1
Carter		
Floyd	0	1
Rowan	1	0
Christian		
Christian	2	0
Clark		
Clark	1	0
Fayette		
Fayette	4	5
Floyd		
Floyd	0	2
Greenup	0	1
Garrard		
Garrard	1	0
Jefferson	0	1
Hardin		
Hardin	2	0
Harlan		
Harlan	2	0
Jackson		
Harlan	2	0
Laurel	0	1
Warren	0	1
Jefferson		
Jefferson	9	11
Kenton		
Kenton	1	2
Knott		
Knott	2	0
Warren	1	0
Knox		
Knox	1	0
Laurel		
Laurel	0	3
Madison	0	1
Leslie		

County	# of Death Penalty Trials Reversed	# of Death Penalty Trials Not Reversed
Clay	1	0
Letcher		
Letcher	1	1
Livingston		
Livingston	0	1
Lyon		
Lyon	2	1
Madison		
Madison	0	2
McCracken		
McCracken	1	0
McCreary		
McCreary	0	1
Muhlenberg		
Muhlenberg	1	0
Oldham		
Henry	1	0
Jefferson	0	1
Oldham	3	0
Pike		
Pike	0	1
Powell		
Rowan	0	1
Pulaski		
Pulaski	1	0
Rowan		
Rowan	0	1
Russell		
Russell	1	0
Todd		
Todd	1	0
Washington		
Fayette	0	1
Washington	1	0
Whitley		
Whitley	1	0
Wolfe		
Wolfe	1	0
Grand Total	52	45

NOTE: The top line is the county of the offense. The lines below it are the count(ies) where the case was tried.