

ILLINOIS

STATISTICAL INFORMATION

Current Governor: Rod R. Blagojevich Jan. Legislative Term: Jan. - May
Term of Office: 2003 - Jan. 2007

Total Inmate Pop.
(As of 6/30/05): 44,679 White: 28% Black: 60% Latino/a: 11% Other: 1%

Death Row Pop.
(As of 04/01/05): 10 White: 6 Black: 2 Latino/a: 2 Other: 0

EXECUTIONS:
Since 1976: 12 White: 7 Black: 5 Latino/a: 0 Other: 0
(As of 6/30/05)

Carried out in 2003: 0

Carried out in 2004: 0

Scheduled for 2005: 0
(As of 6/30/05)

INMATES REMOVED FROM DEATH ROW BETWEEN 1973 AND 2004 *(does not include those executed by the state or those who died of natural causes):*

Total Number: 99

Sentence/Conviction overturned (minus exonerations): 75

Sentence reduced: 3

Exonerations: 17

Other: 8

RELATED STATUTORY PROVISIONS:

Life without Parole: yes

Prohibits the execution of juvenile offenders: yes

Prohibits the execution of mentally retarded offenders: yes

Prohibits the execution of mentally ill offenders: no

CURRENT STATUS OF THE MORATORIUM:

Moratorium: yes

Study: yes

Status: The Illinois House of Representatives' Special Committee on Prosecutorial Misconduct, chaired by Republican Representative James Durkin, studied Illinois' capital punishment system for a year. Proposed reforms in the committee report include pretrial screening of all jailhouse informant testimony, granting of new trials automatically in capital cases where prosecutors knowingly have withheld evidence helpful to the defense, and legislatively authorizing defense counsel to take pretrial depositions of certain witnesses. Separately, in May 2000, Gov. Ryan created a broad-based, 12-member Commission on Capital Punishment to study how the death penalty has been applied in Illinois and to examine why the "process had failed in the past." The Commission reviewed all Illinois capital cases tried in the past two decades and examining the state's entire capital case process, from initial police involvement through trial and sentencing, appeals, and post-conviction and clemency proceedings, as well as issues of police and prosecutorial misconduct, attorney incompetence, and the unreliability of testimony by alleged accomplices and jailhouse informants.

The results of the Commission's study were released in April 2002 and included 85 proposed reforms deemed necessary for a fairer death penalty system. Members of the Commission unanimously agreed that the death penalty has been applied too often in Illinois since it was reinstated in 1977 and that reform of the system is essential to enhance the level of scrutiny in capital cases and thereby reduce trial and sentencing errors. In addition, all Commission members agreed that if capital punishment is to continue in Illinois, public funding must increase significantly at every level of the process, from investigation through trial and beyond. The recommendations include significantly reducing the current number of crimes that are eligible to receive a death sentence from 20 to five; banning execution of the mentally retarded; providing for state Supreme Court review of all death sentences; creating a statewide review panel, comprised of four prosecutors and a retired judge, to conduct a pre-trial review of each prosecutorial decision to seek the death penalty; allowing trial judges the option of concurring with or reversing a

jury's death sentence verdict in every case; and providing sufficient funding to eliminate DNA testing backlogs and ensure proper DNA testing and evaluation in all applicable circumstances.

HISTORY OF LEGISLATION ADDRESSING ABA ISSUES

Moratorium/Study: Current: 2005: One bill failed sine die that creates the Death Penalty Abolition Act (SB2074).

Previous Years: 2003: One bill failed that would abolish the death penalty (HB213). Another bill failed provided that there is a moratorium on the execution of all capital sentences in Illinois until the study described below under racial bias is completed (HB2982). 2001-02 Moratorium in place. One bill failed that would abolish the death penalty (HB 576); One failed bill would provide a five year moratorium on executions (HB3743); Two failed bills provided for a study into the proportionality in capital sentencing to determine whether race, ethnicity, or gender of the defendant or victim influenced the sentence. The bills also called for a moratorium on the death penalty until the study is concluded (HB4139, SB1771); 2000 Gov. Ryan issued a moratorium on executions effective January 31, 2000; 1999 : One bill that failed would have imposed a moratorium on the death penalty and provided for a commission to study the death penalty; One bill failed would have created an independent commission to study all aspects of the death penalty;

1997: One House Resolution died that would have imposed a moratorium on executions until an independent commission could study the death penalty process, recommend reforms, and see that reforms are implemented.

Capital Offenses:

Current: 2005: One bill failed that would have amended the Criminal Code of 1961. Provided that if the trier of fact determines that the evidence was sufficient beyond a reasonable doubt to sustain the verdict of guilty for first degree murder but does not foreclose all doubt respecting the defendant's guilt, the trier of fact may not determine that death is the appropriate sentence and the court shall sentence the defendant to a term of natural life imprisonment (HB2704).

Previous Years: None.

Aggravating and Mitigating Circumstances:

Current: None

Previous Years: 2004 : One bill that failed would have reduced the aggravating factors for which the death penalty may be imposed for first degree murder (HB4677).

DNA Testing and Preservation of Material Evidence:

Current: None

Previous Years: 2004 : One bill signed into effect by the governor provides that on or before February 1, 2005 and on or before February 1st of each year thereafter, the Department of State Police shall provide the Governor and both houses of the General Assembly with the following information: (1) the extent of the backlog of cases awaiting testing or awaiting DNA analysis by the Department of State Police, and (2) what measures have been and are being taken to reduce the backlog and the estimated costs or expenditures associated with doing so (SB3014). One bill that died would have made a technical change in the section that allows the defendant to make a motion for fingerprint or DNA testing on evidence used to secure his/her conviction, but was not tested during the trial because the technology required for the testing was not available at that time (HB4261). 2003: One bill failed sine die that would have provided that the defendant may make a motion for a court order before trial for comparison analysis of those genetic marker groupings maintained by the Department of State Police in its DNA database if the defendant meets all the requirements

provided for in the bill (HB3354). Another bill died that would have created the Illinois Independent Forensic Laboratory Act; provided that the Laboratory shall conduct forensic testing for Illinois law enforcement agencies; provided that notwithstanding any other law to the contrary, all functions related to forensic testing by the Department of State Police shall instead be performed by the Illinois Independent Forensic Laboratory (HB3358). Another bill failed sine die that would have provided that moneys in the Capital Litigation Trust Fund shall be used to pay for forensic testing of evidence that was not subject to testing at the time of the defendant's conviction in a capital first degree murder case because the technology was not available but in which new technology permits DNA testing and the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence (HB3362). Another bill died that would have provided that in capital cases, the trial court shall allow DNA testing if the testing may produce evidence that significantly advances the defendant's claim of innocence but the

evidence need not completely exonerate the defendant (HB3366). Another bill that died would have established the Illinois Independent Forensic Laboratory to conduct forensic testing for Illinois law enforcement agencies (HB3691). Another bill that passed by overriding a Governor veto provides for post-conviction DNA testing that was not available at the time of defendant's trial even if the tests do not completely exonerate the defendant; provides that in a capital case, the defendant may move to have the DNA databases of law enforcement agencies searched for comparative DNA analysis (SB472).

Crime Labs and
Medical Examiner
Offices:

Current: None.

Previous Years: None.

Counsel
Qualifications,
Training, and
Competency:

Current: *2005*: One bill signed into law by the Governor amends the Capital Crimes Litigation Act. Provides that at the request of court appointed counsel in a case in which the death penalty is sought, attorneys employed by the State Appellate Defender may enter an appearance for the limited purpose of assisting appointed counsel. Amends the State Appellate Defender Act. Provides that in addition to other assistance given, in cases in which a death sentence is an authorized disposition, a State Appellate Defender may provide trial counsel with legal advice (SB469).

Previous Years: *2004* : One bill introduced recommends that the Illinois Supreme Court adopt the recommendation of the Governor's Commission On Capital Punishment providing all prosecutors and defense lawyers who are members of the Capital Trial Bar and who are trying capital cases with periodic training (SR465).

2003: Three bills failed that would have amended the Capital Crimes Litigation Act by making technical changes to the section concerning the appointment of trial counsel in death penalty cases (HB1314, SB550, SB1174). *2001-02* : One bill failed that would urge the State Supreme Court to establish qualifications for death penalty defense attorneys (SR54); Three bills failed that would amend the Capital Crimes Litigation Act making technical changes to a Section concerning the appointment of trial counsel in death penalty cases (SB428, HB1936, SB1893); One bill would examine all sentences of death prior to March 2001 to determine whether a defendant was represented by adequate counsel. If adequate counsel was not provided, the sentence would be vacated (HB4274); One bill failed that would provide that defendants sentenced to death can motion the circuit court for a hearing to determine whether their counsel possessed the qualifications to litigate a capital trial established by the Illinois Supreme Court. If the court determines that

counsel did not meet the qualifications, the court must vacate the death sentence (SB1757).

2000: One bill introduced would have urged the State Supreme Court to establish qualifications for death penalty attorneys.

**Counsel
Compensation:**

Current: 2005: One bill that was signed into law by the Governor amends the Code of Criminal Procedure of 1963. Provides that in a case in which the State has filed a statement of intent to seek the death penalty, the court shall require appointed counsel, after counsel has had adequate time to review the case, to submit a proposed estimated litigation budget for court approval that will be subject to modification in light of facts and developments that emerge as the case proceeds. Provides that the budget shall be incorporated into a sealed initial pretrial order that reflects the understandings of the court and counsel regarding all matters affecting counsel compensation and reimbursement and payments for investigative, expert and other services. Provides that the court shall not authorize payment of bills to appointed trial counsel that are not properly itemized (SB2082). One bill failed that amends the Capital Crimes Litigation Act. Provides that the funding provisions of the Act are available in any case involving an offense for which the sentence of death may be imposed as a consequence of conviction, regardless of whether or not the State's

Attorney indicated that he or she would seek the death penalty in that case. Provides that these provisions are retroactive to any capital case that is pending at the time of enactment or that is prosecuted on or after its effective date. Effective immediately (HB123).

Previous Years: 2004 : One bill that failed would have authorized the Public Defender to represent, without fee and appointment by the court, an individual in custody during his/her interrogation regarding first degree murder for which the death penalty may be imposed, provided that individual has requested advice of counsel and there is a reasonable belief that the individual is indigent. In all other cases, the court will appoint the Public Defender to represent any arrested individual when s/he is brought before the court, the court advises the arrestee of his/her right of counsel, and the court determines that the arrestee is indigent (HB4608). 2002: One bill signed into law requires that the State treasury pay 66 2/3% of a county's Public Defender's annual salary and that a full-time Public Defender's annual salary must be 90% or more of the State's Attorney's salary in that county. Provides that when a Public Defender in a county of 30,000 or more population is receiving not less than 90% of the compensation of the State's Attorney in that county, that Public Defender shall not engage in the private practice of law.

Provides that the State monies paid for Public Defender salaries shall be paid monthly from the State treasury to the county in which each Public Defender is employed. Signed into law: 01/01/2002 (Public Act 92-0508) 1999: One bill passed and signed by the governor established a state-funded program for financial assistance at the trial level for capital cases.

Judges and Juries:

Current: None.

Previous Years: None.

Current: None.

**Racial and Ethnic
Minorities:**

Previous Years: 2003: One bill introduced provides that experts should look into cases which a defendant was charged with the offense of first degree murder committed on or after June 21, 1977, to determine whether the race, ethnicity, or gender of the defendant or the victim, the location of the offense, or some combination of these factors influenced the sentence of death (HB2982). Another bill introduced provides that any compensation to be awarded to a victim shall not be reduced or denied based upon the victim's race, color, creed, national origin, sex, sexual orientation, or opinion on the death penalty (HB3230). 2000 : One bill introduced would have prohibited the death penalty where a defendant can make a prima facie showing that race was a factor in the state's decision seeking death.

Juvenile Offenders: Current: inapplicable

Previous Years: inapplicable

Current: None.

Mental Retardation,
Mental Disability and
Mental Competency:

Previous Years: *2003:* One bill that has already passed the House of Representatives and is currently being considered by the Senate provides that a person who has the disability of mental retardation may not be sentenced to death for first degree murder (HB3218). Another bill introduced provides that in a first degree murder case, if the issue is raised by the defendant, the jury (or court if the defendant is tried by the court) shall determine whether the defendant is mentally retarded. Provides that a person is unfit to be executed if the person is mentally retarded. Establishes procedures for raising the question of the defendant's mental retardation at the defendant's sentencing hearing or after the pronouncement of the death sentence (HB104). Another bill, among other things, prohibits the execution of mentally retarded offenders (SB1455, HB3708). Another bill provides that a person who is mentally retarded is unfit to be executed; provides that the question of fitness to be executed may be raised after pronouncement of the death sentence; defines mentally retarded; establishes procedures for raising the

question of the defendant's mental retardation (HB3369). One bill that has been passed by both legislative bodies and has been forwarded to the Governor for his approval provides that a defendant's reduced mental capacity is to be considered as a mitigating factor in capital cases (SB472). Another bill that died provided that in first degree murder cases in which the death penalty may be considered by the court or jury, the mitigating factors that the defendant's background includes a history of extreme emotional or physical abuse or that the defendant suffers from a reduced mental capacity may be considered (HB3367).

2001-02: Two bills would prohibit the imposition of the death penalty of people with mental retardation (SB1903, HB5788). *2000 :* One bill introduced would have prohibited the death penalty for mentally retarded defendants.

Special Notes:

Current: 2005: One bill failed that amends the Code of Criminal Procedure of 1963. Makes a technical change in a Section concerning to the execution of a death sentence (HB2908).

Previous Years: 2004 : Seven bills introduced and held in committee: Proscribing the sentence of life imprisonment, when the death penalty is not imposed, for an individual who was convicted of first degree murder and has previously been convicted of domestic battery or aggravated domestic battery committed against the murdered individual or has previously been convicted of violation of an order of protection in which the murdered individual was the protected person (HB4943). Recommending that the funding provisions of the Act are available to the State and defense in any case involving an offense for which the sentence of death may be imposed as a consequence of conviction, regardless of whether or not the State's Attorney indicated that he or she would seek the death penalty in that case. Provides that these provisions are retroactive to any capital case that is pending at the time of enactment or that is prosecuted on or after its effective date. Effective immediately (HB7291). Recommend that the State Appellate Defender may hire investigators to provide investigative services to appointed counsel and county public defenders.

Provides that investigators employed by the Death Penalty Trial Assistance and Capital Litigation Division of the State Appellate Defender are authorized to inquire with the Law Enforcement Agencies Data System to ascertain whether their potential witnesses have a criminal background. Provides that investigators are authorized only to obtain information on the State level and the information may be used only to protect the investigators' safety. Provides that the investigators may not disclose any information they obtain (SB2591). Recommend that the Illinois Supreme Court adopt the recommendation of the Governor's Commission On Capital Punishment providing all prosecutors and defense lawyers who are members of the Capital Trial Bar and who are trying capital cases with periodic training (SR465). Recommend that the Illinois Supreme Court adopt the recommendation of the Governor's Commission On Capital Punishment to require an additional final case management conference in capital cases and to ensure that there has been compliance with the newly mandated rules, that all required disclosures are complete, and that the case is fully prepared

for trial (SR466). Recommend that the Illinois Supreme Court adopt the recommendation of the Governor's Commission On Capital Punishment directing trial courts to closely scrutinize any tactic that misleads suspects as to the strength of the evidence against them or the likelihood of their guilt, in order to determine whether this tactic would be likely to induce and involuntary or untrustworthy confession (SR467). Recommend that the Illinois Supreme Court adopt the recommendation of the Governor's Commission On Capital Punishment that the Illinois Supreme Court should consider ways to broaden the application of many of the recommendations made by the Commission to improve the criminal justice system as a whole (SR468). 2003: One bill that died encompassed many of these subjects and would have established the Illinois Independent Forensic Laboratory to conduct forensic testing for Illinois law enforcement agencies; permitted the Public Defender to act as an attorney for an indigent person, without fee and appointment by the court, who is in custody during the person's interrogation regarding first degree murder

for which the death penalty may be imposed and the person has requested advice of counsel; eliminated various aggravating factors for which the death penalty may be imposed; creates the State Death Penalty Review Committee to approve the decision of a State's Attorney to seek the death penalty; provided that a defendant charged with first degree murder may make a motion prior to trial to preclude the imposition of the death penalty because the defendant is mentally retarded; provided that a person who is mentally retarded is unfit to be executed.

STATE AND LOCAL GOVERNMENTS AND LEGAL ORGANIZATIONS THAT HAVE PASSED MORATORIUM RESOLUTIONS

The Chicago Council of Lawyers, March 21, 1997

Illinois State Bar Association, March 9, 1999*

Chicago Bar Association, Criminal Law Division

Cook County Bar Association

Cook County Public Defender's Office

First Defense Legal Aid (Chicago)

Illinois Attorneys for Criminal Justice

Illinois General Assembly, Human Services Committee

Illinois House of Representatives

Illinois Public Defenders Association

* The Illinois State Bar Association has not called for a moratorium *per se*, but for a death penalty system review.

****Last Updated on August 26, 2005**