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**Can Capital Punishment System In Texas Be Seen As An Effective  
Way Of Punishment Compared To Other Methods Of Conviction?**

Bachelor Thesis

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I hereby declare that I am the sole author  
of this Bachelor Thesis and it has  
not been presented to any other  
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## Introduction

Capital punishment has been a fixture in the American landscape since colonial times. Over twenty thousand individuals have been executed, since 1608<sup>1</sup>. By the end of the year 2016, altogether 104 countries had completely abolished the death penalty, out of the 195 countries that are in the world.<sup>2</sup> People have to opinions, when it comes to death penalty. In 2003, the U.S Death Penalty support is stable at 63 %. The numbers have gone down from the high point in 1994, when 80% were in favour of the death penalty<sup>3</sup>. As the death sentences have declined 60 % since 2000, so have the executions. Between 1973 and 1995, approximately 5,760 death sentences were imposed in the U.S. Out of this number, only 313 of those sentences resulted in an execution during the period, this means 5,4 % from the total amount<sup>4</sup>. This is a system, which is becoming increasingly expensive and harder to justify. Could it be possible, that the money spent on the death row system, which fails so easily, could be directed to effective programs that make society safer ?

In 1994, 32 % favoured Life In Prison, Without The Possibility Of Parole (LWOP), and 50 % favoured death penalty. In 2010, 46% favoured the LWOP and 49 % favoured death penalty<sup>5</sup>. The popularity of Capital Punishment has decreased substantially. But still, Americans see death penalty as a way of retributions and incapacitations for murderers, and believe, that capital punishment is deterrence for future, possible murderers. A post-conviction study showed, that 82% (247 out of 301) of capital judgements that were reversed, were replaced on retrial, and the outcome was a sentence less than death, or no sentence at all. Several studies show, that the capital

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<sup>1</sup> Sharp, S. Hidden Victims; The Effects Of The Death Penalty On Families Of The Accused. New Jersey, Rutgers University Press (2005) p. 4

<sup>2</sup> Amnesty International: <https://www.amnesty.org/en/what-we-do/death-penalty/>

<sup>3</sup><http://www.gallup.com/poll/159770/death-penalty-%20support-stable.aspx>

<sup>4</sup> Liebman, J., Fagan, J., West, V. A Broken System; Error Rates in Capital Cases, 1972-1995. Columbia Law School, (2000) p.4

<sup>5</sup> Death Penalty Information Centre: Public Opinion About the Death Penalty; <https://deathpenaltyinfo.org/public-opinion-about-death-penalty>

punishment system can often be very inefficient. A study showed, that for every 100 death sentences, at least 68 were thrown out because of serious flaws<sup>6</sup>.

I chose the topic **“Can Capital Punishment system in Texas be seen as an effective way of punishment compared to other methods of conviction ”** for multiple reason. Reason one is that, it has caused a lot of derivation and conversation, when some of the people are supporters of the Capital Punishment, and some see death penalty as inhumane and medieval way of conviction, and prefer life in prison with or without the possibility of parole. Death penalty has been a way of punishment since the beginning of time. This research paper focuses on the system in Texas, USA. I chose Texas for this research paper, as there are seventeen states, which have not executed a single person during the modern era, when Texas has executed 463 offenders. I will also so a short overview of Europe, with emphasis to Finland, as the two prison systems, legislations and outlook on this topic is very different from each other. Through the homicide rates, public opinion, economical situation and current legislations, I will come to a conclusion, whether Capital Punishment is effective or not. Capital Punishment has gone a long way in the past years, as many of the States have made it illegal. This thesis will focus on case laws, which are within the death penalty system, with a comparison to Europe and the United States.

I will also analyse the connection between the deterrence and capital punishment. In 2011, there were 14,610 homicides in the United States<sup>7</sup>, during the same year, only 80 inmates were sentenced to death. Looking at these numbers, it states, that less than 5,5 death sentences are handed down every year for every 1000 homicides. In 2011, 43 executions took place in the United States, which means, that there are 3 executions for 1000 murders.

The main goal of the thesis is to prove valid arguments, calculations and statistics, on both Life in Prison and Capital Punishment, and to come into a conclusion, that is Capital Punishment still seen as an effective way of punishment in todays society, or has it seen it's best days. Looking at the statistics, starting from 1976, Texas has executed nearly 500 people, whereas California has executed 13. Since the year 1976, which was the year of reinstatement of the capital punishment, by the Supreme Court in the United States, all together 1229 individuals have been executed.

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<sup>6</sup> Liebman, J., Fagan, J., West, V. (2000) Supra nota 4, p.6

<sup>7</sup> Smith, E., Cooper, A. Homicide in the U.S. Known to Law Enforcement, (2011) Bureau of Justice Startistics, 2013.

Out of these 1229, three have been executed by the federal government, and the remaining offenders have been executed by the states.<sup>8</sup> I will mainly focus on the modern era of capital punishment, and to the time after *Furman V. Georgia* was decided in 1972, when the Supreme Court was convicted that the then-existing system of capital punishment was unconstitutional<sup>9</sup>. This thesis will also research the question, why is Texas so fervent in pursuing capital punishment and has the aggressive capital punishment produced any benefits ? The author will present relevant cases concerning death penalty, which will give contrast to whether the conviction is fair or not. The author will come to a conclusion, through examples, statistics and interviews, execution of the innocence and re-conviction will also be discussed, as well as the legislations and conventions in Texas and in Europe, with emphasis to Finland.

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<sup>8</sup> Baumgartner, F. *The Geography of the Death Penalty*. University of North Carolina, (2010)

<sup>9</sup> *Furman V. Georgia* 408 U.S 238 (1972)

## 1. Comparison of two different legal systems, Texas and Europe, with emphasis to Finland

The system of death penalty is a controversial issue. The Constitution of Finland of 1999 in Chapter 2, section 7 prohibits capital punishment in under any circumstances<sup>10</sup>. Finland has abolished the death penalty system de jure in 1972, when Texas continues pursuing the system till this day. In Europe it can be argued, that the international pressure to abolish death penalty has grown throughout the years. Among politicians in the Western countries, the outlook on death penalty is negative, compared to the attitude towards death penalty in the United States. In the United States, The Supreme court has stated, that the statutes of the death penalty are accordance with the constitution, furthermore it has become harder for the state legislators in the United States to defend its prohibition<sup>11</sup>.

The abolition the death penalty goes back to 1948, when the Universal Declaration of Human Rights<sup>12</sup> was adopted by the United Nations, and 1985, when the Protocol No. 6 to the European Convention of Human Rights was ratified<sup>13</sup>. Similar steps were taken, when the American Declaration on the Rights and Duties of Man<sup>14</sup> was adopted in 1948. The American Convention on Human Rights<sup>15</sup> regulated the death penalty in 1969, which did adopt a lot of features from the European text. The European Court stated, that death penalty no longer exists in any of the contracting states to the European Convention in *Soering V. United Kingdom and Germany*<sup>16</sup>. Death

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<sup>10</sup> *The Constitution of Finland* §7 <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>

<sup>11</sup> Anckar, C. *Determinants of the Death Penalty; A comparative study of the world*. New York, Routledge (2004) p. 165-167

<sup>12</sup> The Universal Declaration of Human Rights (1948) [http://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)

<sup>13</sup> Barton, J. *Literary Executions; Capital Punishment and American Culture , 1820-1925*. Baltimore, John Hopkins University Press (2014) p. 256 & The Protocol No. 6 to the Convention for the protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, as amended by protocol No.11, Strasbourg, 28.IV.1983

<sup>14</sup> The American Declaration of the Rights and Duties of Man (1948) <https://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm>

<sup>15</sup> The American Convention on Human Rights (1969) <http://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

<sup>16</sup> *Soering V. United Kingdom and Germany* ECHR 14038/88 (1989)

penalty must be abolished among all new Member States in the Council of Europe<sup>17</sup>. There has been many issues and debates on whether the death penalty is unconstitutional or not in the United States, the most controversial one has been *Furman V. Georgia*, when the Supreme Court ruled in 1972, that the death penalty in fact is a violation of the constitutional right against cruel and unusual punishment. The Supreme Court of the United States brought back capital punishment in 1976, as they were asked to rule again on the constitutionality of the death penalty on the case *Gregg V. Georgia*<sup>18</sup>. In the United States, every state makes their own laws, when it comes to giving a conviction. In Texas, the basics governing the punishment laws are the Texas Penal Code § 12.31 covers Capital Felony, §19.03 on Capital Murder, the Texas Code of Criminal Procedure Art. 37.071. procedure in capital case and Art 43.14 Execution of convict governs the confidential information.

### 1.1 The abolition of Capital Punishment in Europe, with emphasis to Finland

Death Penalty had been put into a negative light by European countries, must still even the most advanced international instruments, which deal with the capital punishment, the abolitionist protocols adopted by the United Nations, the Council of Europe and the Organisation of American States do tolerate death penalty during war time<sup>19</sup>. The International Covenant on Civil and Political Rights Article 6<sup>20</sup> states, that every human being has the inherent right to life, and this right shall be protected by law. No one shall be arbitrarily deprived of his life. ICCPR Art.6 (2) states, that countries, which have not abolished the death penalty, may use it on the most serious crimes,

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<sup>17</sup>Schabas, W. *The Abolition of the Death Penalty in International Law*. New York, Cambridge University Press (2002) p. 259-261

<sup>18</sup> Roensch, G. *Furman V. Georgia and Unusual Punishment Great Supreme Court Decisions*. New York, Chelsea House Publishers (2007) p. 10-11 & *Gregg V. Georgia 428 U.S 153 (1976)*

<sup>19</sup> Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty, GA Res. 44/128, art. 2, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty, ETS 114, art. 2 Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty, OASTS 73, 29 ILM 1447, art. 2

<sup>20</sup> The International Covenant on Civil and Political Rights Article 6, 2200A (XXI) 16 December 1966, entry into force 23 March 1976, in accordance with Article 49



this indicates, that lawfully, death penalty is justified. ICCPR Art. 6 also protects persons below 18 years of age as well as pregnant women<sup>21</sup>.

The Council of Europe has campaigned against death penalty for a long time, it has created some 165 international agreements, treaties and conventions. The Council of Europe has achieved big results, by affecting on the way the states exercise their powers. This has been achieved, through the Council of Europe's contribution to the development of regional human rights in the form of the European Convention on Human Rights (ECHR) of 1950<sup>22</sup>. ECHR was the first instrument to treat the abolition of the capital punishment. This happened through Protocol No. 6 to the ECHR<sup>23</sup> in 1983, the Protocol came into force in 1985<sup>24</sup>. In 2002, the Committee of Ministers of the Council of Europe signed Protocol No. 13 to the ECHR<sup>25</sup>. This protocol allows no exceptions when it comes to capital punishment, this was the total abolition. Thirty-three states ratified this protocol and eleven other states signed the protocol<sup>26</sup>

In Finland the restriction of the death penalty did not have a total abolition and part in legislation until 1972<sup>27</sup>. Death penalty was used during times, when there was a crisis occurring, such as the Finnish civil war in 1918, when the death penalty was used in a large scale. Death penalty was also used during the First (1914-1918) and the Second World War (1939-1945). The last execution in Finland has taken place on the 8th of July 1825, the conviction was for a manslaughter in the countryside<sup>28</sup>. The law, according to which the sentence was declared was the General Code of 1732, this dates back to the period, when Finland was under Swedish rule. This execu-

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<sup>21</sup> Schabas, W. (2002) *Supra nota* 17, p. 380

<sup>22</sup> European Convention on Human Rights (ECHR) of 1950 [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>23</sup> ECHR (1983) Protocol No. 6 To The Convention For The Protection Of Human Rights And Fundamental Freedoms Concerning The Abolition Of The Death Penalty, Strasbourg

<sup>24</sup> Sarat, A., Martschukat J. *Is Death Penalty Dying? European and American Perspectives*. New York, Cambridge University Press (2011) p.8

<sup>25</sup> Protocol No. 13 To the Convention for the Protection of Human Rights and Fundamental freedoms, concerning the abolition of the Death Penalty in all circumstances, Vilnius 3.V.2002

<sup>26</sup> See <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=187&CM=7&DF=07/10/2005&CL=ENG> (accessed June 14, 2010).

<sup>27</sup> Laki kuolemanrangaistuksen poistamisesta rangaistusjärjestelmästä 5.5.1972/343.

<sup>28</sup> Nelen, H., Claessen, J. *Beyond The Death Penalty*. United Kingdom, Intersentia (2012) p. 52-58

tion was the last execution, which has taken place in Finland under peacetime<sup>29</sup>. Finland did abolish death penalty rather early, for example compared to Finland neighbour country, which executed it's last ordinary prisoner in 1910. The difference between these last execution dates is rather interesting, as Finland and Sweden do share a common legal past of approximately 700 years, as it started from the Middle Ages, when Swedish kingdom did have united territories with Finland, which led to legal and cultural ties that lasted until 1809<sup>30</sup>. Almost all other democratic nations have abandoned Capital Punishment, but in the United States, death penalty is alive and well<sup>31</sup>.

The abolition of death penalty is a post-second World War phenomenon. In 1948 the Universal Declaration of Human Rights was drafted as a goal for civilised nations. The first international instrument for the Abolition of the death penalty was adopted in 1983, the Protocol No. 6 to the Convention for the Protection of human rights and fundamental freedoms concerning the abolition of the Death Penalty and two followed at the end of 1980s, the Second Optional Protocol to the international covenant on civil and political rights aiming at the abolition of the death penalty and additional protocol to the american convention on human rights to abolish the death penalty. Today, 68 states States, including Finland, is bound by these international legal norms. The Second Optional Protocol to the International Covenant on Civil and Political Rights<sup>32</sup> was annexed to a resolution in the United National General Assembly at its 1980 session, and Finland supported the proposed protocol<sup>33</sup>. When the ICTY<sup>34</sup> and ICTR<sup>35</sup> were established, the international human rights standards started to develop more, as they changed the landscape of international humanitarian law and use of capital punishment started to decrease. Capital punishment has been

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<sup>29</sup> A. Juntunen, *Siperiaan Karkoitukset ja Karkoitettut Siperiassa*. Vankeinhoidon koulutuskeskuksen julkaisu, Helsinki (1983)

<sup>30</sup> Nelen, H., Claessen, J. (2012) *Supra nota 28*, p. 52-58

<sup>31</sup> Zimring, F., Hawkins, G. *Capital Punishment and the American Agenda*. Cambridge, Cambridge University Press, (1986).

<sup>32</sup> UN Doc. A/C.3/35/L.75. Submitted by Austria, Costa Rica, Dominican Republic, Federal Republic of Germany, Italy, Portugal and Sweden. Another draft resolution, UN Doc. A/C.3/35/L.80, dealt with summary executions.

<sup>33</sup> Schabas, W. (2002) *Supra nota 17*, p. 175

<sup>34</sup> The International Criminal Tribunal for the former Yugoslavia (ICTY) (1993)

<sup>35</sup> The International Criminal Tribunal for Rwanda (ICTR) (1994)

abolished in numerous states, when some states still use it extensively. The ICCPR and ECHR<sup>36</sup> do put out restrictions on capital punishment, but they do not prohibit the penalty, while additional protocols to those treaties provide for prohibitions which can be set aside for example in the times of war<sup>37</sup>, however Protocol No. 13 to the ECHR prohibits capital punishment in all circumstances. This means, that the states are treaty-bound to abolish capital punishment, but a prohibition, which would be universally binding, is non existing<sup>38</sup>.

Professor Roger Hood states, that he believes, several factors have influenced the increase of abolitionist countries. These factors are the spread of international treaties and the human rights movement, which includes political pressure and leadership and the rejection of injustices associated with totalitarian regimes. Professor Roger Hood proposes four main objections to the capital punishment, these are 1. Death penalty violates the fundamental right of human life; 2. not a unique deterrent; 3. the administration of the capital punishment, is inherently and irredeemably flawed, even in the most developed legal systems; and 4. its effect is counter-productive in that it gives out a confused moral message<sup>39</sup>. Netherlands was one of the first countries in Europe to abolish death penalty, but also one of the last to continue executions on the public scaffold.

### 1.1.1 General overview of Capital Punishment in Texas, USA

The punishment in the United States for a first degree murder is Death Penalty. The Supreme Court may also grant Death Penalty for other felonies, such as treason.

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<sup>36</sup>The European Court of Human Rights (ECHR) (1959)

<sup>37</sup> Art. 6 ICCPR and Art. 2 ECHR; Second Optional Protocol to the ICCPR 15.12.1989, and Protocol No. 6 to the ECHR 28.4.1983.

<sup>38</sup> Cryer, R., Friman, H., Robinson, D., Wilmschurst, E. An introduction to International Criminal Law and Procedure, Second Edition. New York, Cambridge University Press (2010) p.495

<sup>39</sup> Hood, R. Capital Punishment - A Global Perspective, 3 punishment & Society. Sage Journals. (2001)

Not every homicide is punishable by death. There are factors, which can “excuse” the killer, such as mental illness<sup>40</sup> and self-defence<sup>41</sup>. The Supreme Court has limited the use of capital punishment on the basis of characteristics, in 1986 the court declared, that the capital punishment could not be used as a punishment for the mentally insane, case *Ford V. Wainwright*<sup>42</sup>, in 2002 the Court ruled, that capital punishment is unlawful for the mentally retarded, case *Atkins V. Virginia*<sup>43</sup>, and in 2005 the Court declared, that capital punishment cannot be used for a person under 18 at the time of the offence, case *Roper V. Simmons*<sup>44</sup>.

Texas has a clear basic guidelines, for what crimes fall under the category of Capital Offence. Not every offender can be put to death row. Texas Department of Criminal Justice<sup>45</sup> gives a specific list, what kind of murders can be charged as “Capital Murders”. Prosecutor has to prove beyond reasonable doubt, that there was an intention behind the death of the victim, and that the defendant knew, what he was doing. For the conviction, there needs to be proof, that the defendant 1) caused the death of another person knowingly and intentionally; 2) acted in a way, which was clearly dangerous for human life, and intended to cause bodily injury, which then led to the death of an individual; or 3) There was a felony, (which was not a manslaughter) committed or attempted to commit, and at the time of the felony, the defendant committed an act, which was clearly dangerous to human life and this act caused the death of an individual. In addition to the intention part, the defendant has to be guilty of murdering a peace officer or fireman, who are acting under lawful duty at the time of the felony. Murdering someone intentionally in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction or retaliation, or terrorist threat<sup>46</sup>. Brian Suniga was sentenced to death, after this type of crime<sup>47</sup>, when he tried to rob a restaurant, and his co-defendant Sesilio Caballero

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<sup>40</sup> Americans with Disabilities Act of 1990 (ADA), Justia, Supreme Court

<sup>41</sup>Latzer, B. Death Penalty Cases: Leading U.S Supreme Court Cases on Capital Punishment. The Neatherlands, Elsevier (1998) p. 34 & 2014 Tennessee Code, Title 39 - Criminal Offenses, Chapter 11 - General Provisions, Part 6 - Justification Excluding Criminal Responsibility § 39-11-611 - Self-defense, <http://law.justia.com/codes/tennessee/2014/title-39/chapter-11/part-6/section-39-11-611>

<sup>42</sup> *Ford V. Wainwright*, 477 U.S 399 (1986)

<sup>43</sup> *Atkins V. Virginia*, 536 U.S 304 (2002)

<sup>44</sup> *Roper V. Simmons* , 543 U.S 551 (2005)

<sup>45</sup> Texas Department of Criminal Justice: Death Row facts: [http://www.tdcj.state.tx.us/death\\_row/dr\\_facts.html](http://www.tdcj.state.tx.us/death_row/dr_facts.html)

<sup>46</sup> Texas first degree murder laws; <http://statelaws.findlaw.com/texas-law/texas-first-degree-murder-laws.html>

<sup>47</sup> *Suniga V. Texas No. 2012-434109 (2014)*

Lopez shot a male victim, when he entered the room. Suing had run with a tip jar from the restaurant<sup>48</sup>. Escaping from a penal institution, murdering someone in jail, committing a crime because of money, paying someone else for the murder of someone else, murdering more than one person and murdering someone in retaliation for or on account of the service of a member of the judiciary are all crimes, which are charged as capital murders<sup>49</sup>. Also, murder of an individual under ten years of age is a crime, which is punishable by capital punishment.

The Supreme Court has held, that the death penalty should be reserved for the worst of crimes, it has been discoloured disproportionated for the crimes of rape, as in case *Coker V. Georgia*<sup>50</sup>, child rape, cases *Jose L. Mateo V, State of Texas* and *Kennedy V. Louisiana*<sup>51</sup>, and felony murder when the offender did not participate in the killing, case *Edmund V. Florida*<sup>52</sup>.

The Texas Department of Criminal Justice provides public Death Row Information. The Gender and Racial Statistics of Death Row Offenders shows that there is the total amount of 241 people in Death Row (Updated in January, 2017)..

Six of them have been women and 235 have been men, which also divides it into women 2,5 % and men 97,5 %. The chart shows also the racial distribution. 26,6% percent of the total amount have been white women and men, 44 % have been black women and men, 27,4% has been hispanic women and men, where it also shows that hispanic women are the second smallest group of death row offenders, as the race captioned "other" state that 0% of women are death offenders and only 2,1% are men of the total amount of the death row offenders. 2,1 % of the total amount 241 death offenders are 5 people, all men. Only one hispanic woman has been convicted as a death row offender, two black women and three white women. The chart is taken from the official site of Texas Department of Criminal Justice<sup>53</sup>. See annex 1

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<sup>48</sup> Texas Department of Criminal Justice: Offender information [http://www.tdcj.state.tx.us/death\\_row/dr\\_info/bluntsondemond.html](http://www.tdcj.state.tx.us/death_row/dr_info/bluntsondemond.html)

<sup>49</sup> Texas first degree murder laws; <http://statelaws.findlaw.com/texas-law/texas-first-degree-murder-laws.html>

<sup>50</sup> *Coker V. Georgia* 433 U.S 584 (1977)

<sup>51</sup> *Jose L. Mateo V, State of Texas No. 03-96-00505-CR (1996)* & Tex. Penal Code Ann. 22.021(a)(1)(B)(i) & (iii), (a)(2)(B) (West Supp. 1997). (1) A "child," for the purpose of this statute, is a person younger than seventeen years of age. Tex. Penal Code Ann. 22.011(c)(1), 22.021(b) (West 1994). & *Kennedy V. Louisiana* 128 S.Ct.2641, 2649 (2008)

<sup>52</sup> Limitations on Capital Punishment: Proportionality: (Justia) <http://law.justia.com/constitution/us/amendment-08/09-proportionality.html> & *Edmund V. Florida* 458 U.S 782 (1982)

<sup>53</sup> Texas Department of Criminal Justice: [http://www.tdcj.state.tx.us/death\\_row/index.html](http://www.tdcj.state.tx.us/death_row/index.html)

Looking at the years 1996-2016, which show in the chart, see Annex 2. The chart shows the numbers based on race. When looking at the numbers from 2016 and 2015 it shows, that the amount of executions have dropped almost 50 %, as in 2015 the total amount of executions was 13, and 2016 the amount was 7. The total numbers in the end of each year differ from each other very rapidly. In 1996 there has been 3 executions in Texas, and during the next year there has been 37 executions, and the next year 1998 the total amount has been 20 executions. This chart indicates, that the total amounts of executions are not bound to the previous years. From the year 1996-2016 the year 1997 has had the highest amount of executions. White people have been executed the most out of the categories “White”, “Black”, “Hispanic” and “Other” in the years 2016, 2011, 2010, 2007, 2005, 2003, 2002, 2001, 2000, 1999, 1998 and 1997. From the years 1997-2003, the leading amount of people executed consisted of white people. Black people have been executed the most in the following years; 2013, 2012, 2009, 2008, 2006 and 2004. hispanic people have been executed the most in the year 2015. During the year 2014 black and hispanic people shared the same percent of persons executed. In the year 1996 there was one person executed from every category, except from the category “Others”<sup>54</sup>.

Capital punishment was declared “cruel and unusual punishment” by the U.S Supreme Court on June 29th 1972. After the declaration, the Governor of Texas commuted the death row sentences to life sentences, and the death row was clear by March 1973. Before that there were 45 men on death row in Texas. New statute came into force in 1974, and the Texas Penal Code allowed assessments of the death penalty and executions. John DeVries<sup>55</sup> was the first one to be placed on death row in 1974 after the change, but according to the information from Texas Department of Criminal Justice he committed suicide before the execution<sup>56</sup>. As much as 450 prisoners were under death in Texas at the end of 2002, almost 15 % of the national total<sup>57</sup>. Joseph Johnson was the last inmate to be electrocuted in Texas on electric chair, on July 20th 1964<sup>58</sup>. The Death

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<sup>54</sup> Texas Department of Criminal Justice: Executions, December 7, 1982 through March 14, 2017 [http://www.tdcj.state.tx.us/death\\_row/dr\\_executions\\_by\\_year.html](http://www.tdcj.state.tx.us/death_row/dr_executions_by_year.html)

<sup>55</sup> *DeVries V. Taylor* 505 S.W.2d 780 (1973)

<sup>56</sup> Texas Department of Criminal Justice: Death Row facts: [http://www.tdcj.state.tx.us/death\\_row/dr\\_facts.html](http://www.tdcj.state.tx.us/death_row/dr_facts.html)

<sup>57</sup> Sorensen, J., Pilgrim, R. *Lethal Injection Capital Punishment in Texas during the Modern Era*. Texas, University of Texas Press (2006) p.11

<sup>58</sup> *Johnson V. State* Case No. 36123 378 S.W.2d 76 (1964)

Penalty Information Centre 2014 Year end report states, that there were 35 executions in 7 states, which was the fewest number since 1994. Even though there were 35 executions, there were 72 death sentences altogether on that same year, that was also the lowest number in 40 years of the modern death penalty. In 2014 Texas, Missouri and Florida were responsible for 80% of the executions happened in the whole of the United States.

## 2. Death Penalty Cases

There are many factors, which have contributed to the capital punishment system that the United States has now. Many books mention same cases, which have made a huge influence, and still have an effect till this day, when it comes to capital cases. The importance of the *Furman V: Georgia* is, that it questioned the death penalty system, and pointed out, that there is something wrong with the system, thus, it did not abolish the death penalty from the United States, it is one of the most significant decision in the history regarding capital punishment<sup>59</sup>.

### 2.2 *McGautha V. California and Crampton V. Ohio*

The Supreme Court first heard the oral arguments from Dennis McGautha<sup>60</sup> and James Crampton in November of 1970. The final decision for these cases was rendered in 1971. McGautha was sentenced to death for a kill , that was done during an armed robbery, and Crampton was sentenced to death for a first degree murder of his wife. The defendants lawyers argued, that the sentence, imposed on McGautha and Crampton was violating the Fourteen Amendments right to due process of law and that the sentences were not governed by principle. Furthermore, McGautha's trial was then bifurcated, but Crampton's was not. McGautha's claim was joined for decision with Crampton, was rejected by a vote of six to three. The rejecting claim stated , the Court approved firstly, unfettered jury discretion in death sentencing, and secondly, capital trials, in which guilt and sentence were determined in one set of deliberations. Abolitionists still remained hopeful, because there was a suggestion, that the Court had not yet closed entirely the possibility of a successful Eighth Amendment challenge<sup>61</sup>. In 1971, less than 60 days after McGautha decision, the Supreme Court did agree on reviewing four cases that did challenge the death penalty constitutionality. The question was "Does the imposition and carrying out of death penalty in this case constitute cruel and unusual punishment in violation of the Eight and Four-

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<sup>59</sup> Roensch, G. (2007) *Supra nota* 18, p. 96

<sup>60</sup> *McGautha V. California*, 402 U.S 183 (1971)

<sup>61</sup> Meltsner, M. *Cruel and Unusual: The Supreme Court and Capital Punishment*. New York, Random House. (1973) p. 246



teenth Amendments?'. The four cases were *Aikens V. California*<sup>62</sup>, *Branch V. Texas*<sup>63</sup>, *Furman V. Georgia and Jackson V. Georgia*<sup>64</sup>.

### 2.2.2 *Aikens, Branch, Furman and Jackson*

There were almost 200 pending death penalty appeals in 1971, when the Court selected these four cases<sup>65</sup>. Out of these, Aikens and Furman were murder cases and Jackson and Brandon were rape cases<sup>66</sup>. LDF attorneys represented Aikens, Furman and Jackson, so the Court decided to choose these specific cases, as they knew their Eighth Amendment challenges would be well presented. Jackson was picked, because the victim of his rape had not suffered any injuries, so it would seem, that the death penalty given to him was disproportionately severe for rape<sup>67</sup>. The Court tactically chose rape and murder cases, so that they could leave themselves the option to declare death penalty unconstitutional for rape but not for murder. All of the defendant were black, and all of the victims were white, in these specific cases.

Aikens was sentenced to death for a first degree murder in California. He raped and stabbed to death two women in 1962 and 1965. Aiken pleaded not guilty to both charges. At Aikens's trial in 1969 he was found guilty on both charges, and he was sentenced to death.

Branch was sentenced to death for the rape of a 65-year old woman in Texas. Branch did not threaten the woman, nor did he have any weapons with him at the time of the rape, but he did press the woman's mouth, when she tried to scream. Branch had the IQ of 67.

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<sup>62</sup> *Aikens V. California* 406 U.S 813 (1972)

<sup>63</sup> *Branch V. State of Texas* 447 S.W.2d 932 (1969)

<sup>64</sup> *Jackson V. State* 184 S.E.2d 185 (1971)

<sup>65</sup> Banner, S. *The Death Penalty: An American History*. Cambridge, Harvard University Press. (2002) p.258

<sup>66</sup> Meltsner, M. (1973) *Supra* nota 61 p. 246

<sup>67</sup> Banner, S. (2002) *Supra* nota 65, p. 258

*Furman* was sentenced to die for the murder of a Coast Guard petty officer in Georgia. *Furman* was diagnosed as mentally deficient with convulsive disorder and also he suffered from psychotic episodes, but this did not come up during the trial<sup>68</sup>.

*Jackson* was sentenced to die for the rape of a young woman in Georgia. At the time he committed the rape, he was serving a three year sentence, but *Jackson* escaped from a prison work gang.

#### 2.2.2.2 *Furman* decision

The three cases; *Furman V. Georgia*, *Jackson V. Georgia* and *Branch v. Texas*, will now be referred as “the *Furman* decision” (The three cases were consolidated under 408 U.S 238, 1972). In the decision the Court decided, that the death penalty statutes were unconstitutional, because they did give the jury a complete discretion to make the decision, that whether they would impose the death penalty a lesser punishment in capital cases. The majority of the jury did agree, that the statutes provided for a cruel and unusual punishment in violation of the Eight and Fourteenth Amendments. The decision of these cases consisted of 50,000 words and 243 pages, which was the longest decision in the Supreme Court history at that time<sup>69</sup>. A practical effect of the decision was the Supreme Court’s voiding of 40 death penalty statutes and the sentences of over 600 inmates, who were on death row, in 32 different states<sup>68</sup>. The inmates did receive new sentences of life imprisonment, a term of years or even new trials<sup>70</sup>.

One major factor, which did influence the Court’s decision could be the Fourth U.S Circuit of Appeals’ decision in *Ralph V. Warden*<sup>71</sup>. Other influencing factor could have been California’s preemptive action, when California Supreme Court decided on *People V. Anderson*<sup>72</sup>. The Court still did not declare death penalty itself unconstitutional, but what it did held as unconstitutional was the statutes under which the death penalty was then being administered. After the influence of the *Furman* decision, Florida was the first jurisdiction to reinstate death penalty, and Georgia

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<sup>68</sup> Haney, C. *Death By Design: Capital Punishment As A Social Psychological System*. New York, Oxford University Press. (2005) p.21

<sup>69</sup> Woodward, B., Armstrong, S. *The Brethren: Inside the Supreme Court*. New York, Simon and Schuster. (1979) p. 510

<sup>70</sup> Meltsner, M. (1973) *Supra* nota 61

<sup>71</sup> *William Ralph v. Warden, Maryland Penitentiary*, 438 F.2d 786 (4th Cir. 1971)

<sup>72</sup> *People V. Anderson* 6 Cal. 3d 628, 493 P.2d 880, (1972)

was the first jurisdiction, to impose a post-*Furman* death sentence. One important response, that raised from the *Furman V. Georgia* decision was life in prison without the opportunity of parole (LWOP), which will be discussed later.

### **3. Is Life in Prison the modern Capital Punishment ?**

Death sentences are not the same as executions. Most of the inmates, who are sentenced to death are not executed, as they have the chance to go through the appeal stage, and the possibility to have their sentences changed to life in prison. As they go through the appeal, they get the chance to have a new trial and are then possibly acquitted or sentenced to a penalty, not as crucial as death<sup>73</sup>.

Former Texas congressman, Ron Paul, opposes death penalty. Dr Ron Paul argues in his essay<sup>74</sup>, that it is hard to find a more wasteful and inefficient government program than the death penalty. He states, that the reason, why government spend so much money on the capital punishment, is corruption, waste, and incompetence, and these are ranging from Obamacare to the TSA to public schools to the post office, and this all is topped with a the long history of government failures<sup>75</sup>. Life in Prison without the possibility of Parole will now on be stated as “LWPO”. LWOP is the alternative for Capital Punishment. A poll found, that 70 % of Californians are in favour of the death penalty, and when they were given the opportunity to choose between LWOP and Capital Punishment, 41% favoured Capital Punishment for first degree murder<sup>76</sup>. There is over 41,000 people in the United States under LWOP and in total more than 140,600 people are serving some form on life imprisonment. LWOP do not offer the felon a possibility of release, but there are other sentences, such as life imprisonment, which do offer a theoretical possibility of release, but in practise they often result in the offenders death in prison. Different states offer different life imprisonments. For example, in Tennessee, USA, the offender must serve the minimum of 51 years, before he or she is eligible for parole. Colorado has put the limit to the mini-

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<sup>73</sup> Baumgartner, F., De Boef, S., Boydston, A. *The Decline of the Death Penalty and the Discovery of Innocence*. New York, Cambridge University Press (2008) p. 27

<sup>74</sup> Hyden, M. *Ron Paul: Death Penalty: The Ultimate Corrupt, Big Government Program* (2015) <http://conservativesconcerned.org/ron-paul-death-penalty-the-ultimate-corrupt-big-government-program/>

<sup>75</sup> Block, W. *Criminal Justice Ethics*, Volume 34. EBSCO Publishing (2015) . p.339-346

<sup>76</sup> DiCamillo, M., Field, M. *Seven in Ten Californians Continue to Favor Capital Punishment*. Field Research Corporation, July 22, 2010. <http://www.field.com/fieldpollonline/subscribers/Rls2351.pdf>.

mum of 40 years, Kansas 50 years<sup>77</sup>. When it comes to LWOP and Capital Punishment, they do share a lot of similarities. Both of the convictions can be seen as a violation of Civil Rights.

Mr. Libertarian, Murray Rothbard, stated that the murderer loses the right, which he has deprived from the another human being; the right to have ones life preserved from the violence of another person<sup>78</sup>. And the murderer thereof deserver to be killed in return. But under libertarian law, only murderers should have capital punishment. Only a person, who has taken another's life, deservers to lose his right to life.<sup>79</sup> Some people argue, that LWOP is worse than capital punishment. The prisoners can be held in their cells for 23 hours per day, this brings up the question, which one is worse ? Wait for death for an arranged death for well over 20 years, or sit and wait for natural death ? Inmates who are on death row, are usually isolated from other prisoners, they are excluded from the employment and educational programs and their visiting rights as well as exercising is rather limited<sup>80</sup>. How much more profitable can Life in Prison without the possibility of parole be, when the defendant is still young, when convicted. Annex 3 shows the average time spend in prison between sentencing and execution. Different states rule differently on Death Penalty for minors. In some cases, the court may rule, that to treat the defendant as an adult, is in the best interest of petitioner and the community. In *Stanford V. Kentucky* the United States Supreme Court decision sanctioned the imposition of the capital punishment on offenders who were at least 16 years old, when they committed the crime<sup>81</sup>.

Could an alternative penalty be more humane way of punishment ? Such as the previously discussed life in prison without the possibility of parole ? But with LWOP comes a lot of moral questions, as people often feel it is not enough. Is it possible for people find peace among society, knowing that a person has been able to do a homicide once is now walking among them again. Some criminals are dangerous for life. They can be mentally very damaged, so they just

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<sup>77</sup>Ogletree, C Jr., Sarat, A. Life Without Parole Americas New Death Penalty? New York, New York University Press (2012)

<sup>78</sup> The Plumb Line: The Capital Punishment Question. Libertarian Review, Vol. , No 5 (1978) pp.13-14 <https://mises.org/library/libertarian-position-capital-punishment>

<sup>79</sup> Criminal Justice Ethics, Volume 34. EBSCO Publishing (2015)

<sup>80</sup> Death Penalty Information Center, <http://www.deathpenaltyinfo.org/time-death-row>

<sup>81</sup> Latzer, B. Supra note 41 & *Stanford V. Kentucky Case No. 87-5765, Us Supreme Court (1989)* <https://supreme.justia.com/cases/federal/us/492/361/>

do not fit into the society without personal help. Some of these criminals say so themselves, they know they are not capable of living a normal life. It can be mentally very hard for the victims' family, or the survivors of a crime to know, that the person, whom they have done wrong is still among them. Even though, the person is locked away and supervised, they can still have a psychological effect on others.

In an article "States With No Death Penalty Share Lower Homicide Rates" by Raymond Bonner and Ford Fessenden, published in *Times*, September 22, 2000, a Detroit prosecutor, Mr O'Hair said; "If you are after retribution, vengeance, life in prison without parole is about as punitive as you can get"<sup>82</sup>. The author disagrees. For example in Michigan, life in prison without the possibility of parole means the rest of your natural life in prison, let us assume that will be 40 years. The killer, who may have killed, abused and tortured good citizens - even kids- still has the right to live his life. Is this an effective way, of bringing justice to the victims' family? Will anyone affected by the crime find peace, when they know, that the person, responsible for this is having health care, food, housing and may even have the possibility to see their family, and with good behaviour they are moved to a larger cell, which is brighter and cosier. They get to interact with other prisoners, for example when eating and they get small comforts, such as TV. Life in prison may be cheaper for the government, but does it serve the society as a whole? According to a survey, 133 death row inmates, or nearly 9% of the 1,229 people executed, since 1976, voluntarily dropped their legal appeals, and were executed, as they thought, that LWOP was worse than death<sup>83</sup>. Thomas J. Grasso stated, as his last statement before his execution; "Life without parole is much worse than the death penalty..."<sup>84</sup>.

LWOP can be recalled, capital punishment can not. Once a person is executed, that person is forever gone. When it comes to juvenile offenders, Europe has ruled out LWOP, and in many European countries any form of life sentence is prohibited for child offenders. LWOP has been declared unconstitutional in Germany, France and Italy. LWOP has been outlawed, as well as every other form of life sentence in Portugal, Norway and Spain. Other European countries still practise life imprisonment, but they do have a mandated term of years after which the life sentence

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<sup>82</sup> Raymond Bonner, Ford Fessenden, "States With No Death Penalty Share Lower Homicide Rates", *Times*, 2000, <http://www.deathpenaltyinfo.org/node/657>

<sup>83</sup> Ogletree, C Jr., Sarat, A. (2012) *Supra* nota 77

<sup>84</sup> *United States of America V. Rutilio Lorenzo Petti A/k/a Thomas Grasso F.2d 294 (3d Cir. 1972)*.

must be reviewed. Article 3 of the The European Convention of Human Rights prohibits torture and inhumane or degrading treatment or punishment<sup>85</sup>. As an example from the different convictions comparing United States and Europe, is a man, convicted for a kidnap and sexual assault of a minor, served six years in prison<sup>86</sup>, compared to a man in Las Vegas kidnapped and sexual assaulted a minor, but was sentenced to multiple life terms<sup>87</sup>.

### 3.3 Life in Prison as a more convenient conviction for the states, than Capital Punishment

How much does it cost to incarcerate an inmate in prison? According to The Legislative Analyst's Office 32,019 dollars to provide security for one inmate for one year, 21,582 dollars for health care; 7,025 dollars for prison operations like maintenance and utilities; 4,171 dollars for administration; 3,484 dollars for food and activities; 2,437 dollars for rehabilitation programs, this includes academic education and 93 dollars in miscellaneous costs. This means, that it costs to approximately 71,000 dollars for the state of California to incarcerate one inmate for one year.

Lewis & Clark Law School and Seattle University did a study, that examined murder cases in Oregon. The study found, that when a trial ends up in death penalty, and not to life imprisonment or term of years, the costs are almost double. If the state prison costs are excluded, the cases, which ended up in death sentence may be three to four times more expensive than life imprisonment/term of years. The same study found, that it costs Oregon tax payers approximately 2,3 million dollars to hand down 61 death sentences, this includes incarceration costs, while a comparison group of 313 aggravated murder cases cost approximately 1,4 million dollars. When the state prison costs are excluded it costs 1,1 million for death sentences vs. 315,159 dollars for

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<sup>85</sup> *ECHR (2008), 33290/07*

<sup>86</sup> "Man Jailed in Austria for Kidnapping Niece, Abusing Her for 18 Months," AFP, March 19, 2010, <http://www.smh.com.au/world/man-jailed-in-austria-for-kidnapping-niece-abusing-her-for-18-months-20100319-qisy.html>.

<sup>87</sup> Cara McCoy, "Man Gets Life Sentences in Girl's Kidnapping, Assault," *Las Vegas Sun*, January 13, 2010, <http://www.lasvegassun.com/news/2010/jan/13/man-gets-life-sentences-girls-kidnapping-assault/>.

other cases. In 1980s death penalty costs were 274,209 dollars, and in the 2000s the death penalty costs are 1,783,148 dollars in Oregon. See annex 4<sup>88</sup>

The trials in capital cases last longer, they have more lawyers, more witnesses and everything are in a larger scale, compared, for example, to a non-capital first-degree murder trials. The first trial in capital cases is followed by a second trial, which is known as the penalty phase. Once the inmate has been convicted, and sentenced to death, the inmate is housed in a high-security installation. Most of the costs, which add up to the pricey death penalty system, comes from the costly trials and from the high-security prisons, as general prisons are cheaper, compared to the capital cases, where there are one inmate per cell, with higher amount of prison guards. The annual costs to incarcerate an inmate has increased by approximately 22,000 dollars, (which is almost 45 % from the previous costs) since the year 2010. There are various factors, which have indicated to the increase, such as employee compensation, increased health care costs and operational costs related to additional prison capacity to reduce prison overcrowding<sup>89</sup>.

In 2009, the average cost to house an inmate in Texas prisons in 47,50 dollars per day. That daily cost means 17337,5 dollars for the entire year. Lets assume, the inmate stays for 40 years, that adds up to approximately 693,500 dollars. To execute one inmate, that adds up to roughly 1,2 million dollars. The costs for the pricy capital punishment comes from the cost of trials, appeals, establishment, staffing and operating a separate housing facility in conjunction with the states maximum security level and for the execution itself, which is the lethal injection, which will be discussed later. The defence attorneys have to hire experts, who will look at the defendants background, so that they would find something, which would reduce the defendants apparent. According to a gallup poll done in 2009, 65% of Americans support the death penalty for convicted murderers, 31 % oppose it. In 2009 there were approximately 306,8 million people living in the United States, that means, that 199,420,000 million people were supporting capital punishment<sup>90</sup>.

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<sup>88</sup> The Chart is from; <https://deathpenaltyinfo.org/news/past/16/2016>

<sup>89</sup> Legislative Analyst's Office (LAO) updated March 2017 [http://www.lao.ca.gov/PolicyAreas/CJ/6\\_cj\\_inmatecost](http://www.lao.ca.gov/PolicyAreas/CJ/6_cj_inmatecost)

<sup>90</sup> Logan Carver, "Death penalty cases more expensive than lifetime imprisonment, but local CDA says cost never a consideration" Lubbock Avalanche Journal, December 13, 2009



The estimated cost per a capital case have ranged from 1,8 million dollars in New York and 3,2 million dollars in Florida to as much as 15 million dollars in California to taxpayers. Numerous studies have shown, that execution of a prisoner is more costly than Life in Prison. The Death Penalty Information Centre estimated, that criminal justice expenses nationwide are about half billion dollars higher since 1976 due to the expenses associate with death penalty<sup>91</sup>.

Numerous sturdies have shown, that Death Penalty can cost million dollars more for the state, than Life in Prison without the possibility of parole. Capital Punishment as well as every conviction inside a state affects on tax rates, which causes a burden on the society. In 1998 James Byrd Jr was killed in Texas. Two of the men involved, Berry, Shawn Allen<sup>92</sup> and Brewer Lawrence Russell<sup>93</sup> were sentenced to death. Jasper County struggled to pay for the trials. A total of 730,640,55 dollars was used for the prosecution, defines and other court costs. When the county was preparing for the trials, the tax rate increased to 8 % during the years 1999 and 2000, compared to previous less than 5 % the tax rate has been increasing per year. The trial for these men was obviously a visible bump in the whole county, that it was compared to a budget shock cause by a flood in 1970<sup>94</sup>.

*King V. State*<sup>95</sup> case and a case in Wyoming, where two assailants, Aaron McKinney and Russell Henderson beat up a gay teenager Matthew Shepard and left him to die while tied to a fence<sup>96</sup>, had an effect on though hate crime legislation. President Obama signed the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act<sup>97</sup>. The law expands hate crime protections to outlaw attacks, which are based on sexual orientation, gender, race, color, religion or na-

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<sup>91</sup> Haines,H. Against Capital Punishment, The Anti-Death Penalty Movement in America 1972-1994. New York, Oxford University Press (1996) p.170

<sup>92</sup>The Texas Tribune: <https://www.texastribune.org/library/data/texas-prisons/inmates/shawn-allen-berry/743323/>

<sup>93</sup> Lawrence Russell Brewer: <http://www.clarkprosecutor.org/html/death/US/brewer1268.htm>

<sup>94</sup> Selby, W. Ron Paul says death penalty trial fluffed Texas country's tax hike. Politifacts Texas, 09-07.2015, <http://www.politifact.com/texas/statements/2015/jul/09/ron-paul/ron-paul-says-death-penalty-trial-fueled-texas-tax/>

<sup>95</sup> *King V. State* 29 S.W.3d 556 (2000) No. 73,433

<sup>96</sup> Brooke, J. Gay Man Dies From Attack, Fanning Outrage and Debate. New York Times, 13.09.1998, <http://www.nytimes.com/1998/10/13/us/gay-man-dies-from-attack-fanning-outrage-and-debate.html>

<sup>97</sup> The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249, was enacted as Division E of the National Defense Authorization Act for Fiscal Year 2010. <https://www.justice.gov/crt/matthew-shepard-and-james-byrd-jr-hate-crimes-prevention-act-2009-0>

tional origin, examples on these are cases *United States V. BeeBee Case*, *United States V. Maybee*, and *Glenn V. Holder Case*<sup>98</sup>. The death penalty against Levi King, for the murder of a father, a pregnant mother, and their teenage son, cost the state 885,382,33 dollars, this led to the increased taxes and suspension of annual raises for county employees, according to an investigation done by Maurice Chammah for the Marshall Project<sup>99</sup>. After this million dollar trial for Levi King, a single juror refused to give him death sentence<sup>100</sup>.

### 3.3.3 Capital Punishment as a deterrent

In the United States there were thirty-three executions altogether in 2002, Texas was responsible for thirty three of these executions. 450 prisoners were under death sentence at the end of 2002. While Texas executed 33 of these 450 in 2002, California executed one out of 614.

In the year 2002, 159 prisoners were sentenced to death in the United States<sup>101</sup>. When looking at the Federal Bureau investigation Data, it shows, that half of the states with death penalty in use do have homicide rates above the national average, while 10 of the 12 states without capital punishment have homicide rates below. An analysis, made by The Times found, that when comparing state- to - state, the homicide rates in states which do have death penalty have been 48 % to 101 % higher, compared to the states that do not have Capital Punishment, during the last 20 years. This does not still indicate, that death penalty is not an effective way of punishment. Some crimes are done in such an inhumane way, the only way to bring closure to the victims family, and maybe to avoid public horror, is capital punishment. Dr Ron Paul argued, that if death penalty is an effective way of punishment, why do jurisdictions without death penalty have lower crime rates, than those jurisdictions which with the death penalty ? A survey from 2009 found

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<sup>98</sup> Jackson, David, USA Today, 28.10.2009, <http://content.usatoday.com/communities/theoval/post/2009/10/620000629/1> & *United States V. BeeBee Case No. 10-cr-03104 BB (2011) New Mexico*, & *United States V. Maybee, Case No. 11-30006, Arkansas (2011)*, & *Glenn V. Holder Case No. 10-10429-BC, Michigan*.

<sup>99</sup> Chammah, M. The Marshall Project, Non profit journalism about criminal justice, <https://www.themarshallproject.org/staff/maurice-chammah#.SHuxDLZYt>

<sup>100</sup> Guilfoos, K. Levi Kin Costs Gray County Near 1 Million. *NewestWest9.com*, <http://www.newswest9.com/story/11386885/levi-king-costs-gray-county-near-1-million>

<sup>101</sup> Sorensen, J., Pilgrim, R. (2006) *Supra nota*, 57

that, the majority of American police chiefs considered death penalty the least effective way to reduce violent crime<sup>102</sup>.

In 2006, over 840,000 person were convicted of felonies, and served some sort of conviction<sup>103</sup>. The average time spent in state prison was 4 years and 11 months<sup>104</sup>. During the years 1976 to 2004, which is also known as the modern era, the annual number of homicides ranged approximately from 15,000 homicides in 1999, to the highest number of homicides from the year 1993, when the number was just under 25,000. Still, the amount of execution carried through, was never greater than 98. There were overall about 577,322 homicides and 944 executions during 1976-2004 in the Unites States<sup>105</sup>.

Proponents of the capital punishment argue, that the fear of being executed for their crimes, would prevent future killers from carrying out their capital crimes, when opponents of the capital punishment argue, that the fear of being executed, does not prevent criminals from carrying out their crimes. By comparing analysing the homicide rates before and after the death penalty was abolished, the deterrent effect of death penalty can possibly be seen. A cross-country study was done in 1983, and the homicide rates before and after abolition were compared for ordinary crimes in Austria, Canada, Denmark, England and Wales, Finland, Israel, Italy, Neatherland Antilles, Norway, Sweden and Switzerland. The results of the study showed, that there was no remarkable link between the homicide rates and death penalty. There has been lots of empirical studies done from the same subject, and all of them seem to confirm, that there is no clear-cut link. However, studies have been done from another pontiff view as well, as Isaac Erlich (1975) found evidence, that there is a link between execution risk and murders. Erlich's studies have been confirmed multiple times ( Cloninger 1977, Layson 1985) but some have falsified it as well ( Forst 1977, Decker and Kohfeld 1990 ). Out of these studies, the conclusion can be made, that capital punishment does not have a clear deterrent effect on homicide rates, but there are no studies, which show that the effect is non existence.

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<sup>102</sup> Criminal Justice Ethics, Volume 34. EBSCO Publishing (2015)

<sup>103</sup> Sean Rosenmerkel, Matthew Durose, and Donald J. Farole, Jr., Felony Sentences in State Courts, 2006—Statistical Tables. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2009

<sup>104</sup>Ogletree, C Jr., Sarat, A. (2012) *Supra* nota 77

<sup>105</sup> Baumgartner, F., De Boef, S., Boydston, A. (2010) *Supra* nota 73, p. 36

Some studies show that, there can also be a opposite effect on the death penalty, which is the increase of homicide rates. This is called the brutalising effect. People commit murders in hope of receiving the death penalty. Some people can be too afraid of committing a suicide, so they see death penalty as a way of overcoming the problem. This is also known as the “suicide-murder syndrome” . “the executioner syndrome” is used, when one commits a murder in believe that they are eliminating a problem. There are also a specific category for those, who only wish to be on death row for publicity and fame.

If a country has a high level of crime, it can be the sum of many circumstances. These can be poverty, scarcity of resources and so on<sup>106</sup>.

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<sup>106</sup> Anckar, C. (2004) *Supra nota* 11, p.46-48

## 5. Reconviction of offenders

During the years 1969-1992 there were 384 inmates died, during serving their sentence, which 152 were because of natural causes, 184 were suicides, 25 were accidental causes and 12 were violent deaths. The average age of inmates committing suicide was 32 years old, violent deaths 34 years, and natural deaths the average age was 48 years. Over 50 % of the inmates, who committed suicide did see a doctor approximately one week before the suicide, as they were suffering or thought they had mental problems.

In 2001 Finnish prisons did 300 crime reports to the police. 176 of these reports were drug related crimes, 29 were escaping from the facility, 8 was for resisting public servant by using violence and 45 reports were about violent behaviour between inmates. If these numbers were divided to all of the inmates serving in Finland, this would mean that one in twenty inmates would commit a crime while serving their sentence, once a year. The biggest percentage on inmates, who are imprisoned again is among defendants, who have committed a violent crime (approximately one in three). Approximately 5% are women and 5 % are under 20 year of age, according to the official Finnish crime rate<sup>107</sup>. According to the same website, approximately 70-83 % of the Finnish adult population have higher- or secondary education<sup>108</sup>, but out of these, only few percent are inmates, and highly educated people are a rarity.

It is a common phenomenon in Finland, that the inmates, who are released from their conviction, once they have served their sentence, struggle with normal life. They may suffer from drug addiction, or alcohol addiction, which leads to them spending their money on their addiction. The prices on apartments in Finland is very high as well, and as the inmates who are releases don't usually have any income, they are unable to pay the rent required. Most of the inmates also suf-

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<sup>107</sup> see from: [http://rikosseuraamus.fi/material/attachments/rise/julkaisut-risenjulkaisusarja/n39KxWVtv/1-2004\\_-\\_Vankeusrang.uusiminen.pdf](http://rikosseuraamus.fi/material/attachments/rise/julkaisut-risenjulkaisusarja/n39KxWVtv/1-2004_-_Vankeusrang.uusiminen.pdf).

<sup>108</sup> STV (2002) Suomen tilastollinen vuosikirja 2002. Tilastokeskus. Karisto Oy. Hämeenlinna.

fer from debt<sup>109</sup>, which is usually the reason, they end up back in prison<sup>110</sup>. Taking care of the inmates, once they are released, is not part of the prison system<sup>111</sup>.

To be a first timer in the prison system in Finland means, that the inmate has not served time in prison in Finland, nor in any other Nordic country, in the last three years, dating back from the day the crime was committed (Ministry of Justice 7/01/94). About 60 % of monitored prisoners returned to prisons within the next five years, after their release. During the years 1993-2000 40,099 inmates were released, at the end of 2011, there were 22,295 new convictions given to these prisoners, that means, that 55,6 % of the inmates were imprisoned again. About every other inmate returned to prison within the next five years at least once.

This research examined how great a share of the sentenced prisoners start to serve a new unconditional sentence within five years of their release. The data collected from the central prison register in 1993-2002 included 20,000 separate persons and their 10,000 prison terms. Foreigners and the dead during the follow up time had been taken into account, when calculating the share of the recidivist. The official research and statistics showed, that over half of the released inmates returned to prison, the majority of those for the first time in prison did not return. In Finland, men re-offend more often than women, and 80-90 % of the young offenders returned to prison at least once. Person sentenced for homicide and sexual offences reoffend more rarely than others<sup>112</sup>.

There are two states in the United States, which require jurors to make a prediction before imposing a death sentence, whether there is probability that the defendant will continue to be a threat to the society, and would commit more criminal acts of violence in the future, and Texas is

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<sup>109</sup> Kilpeläinen, M. Sakon muuntorangaistus. Oikeustaloustieteen pro gradututkielma (141925). Taloustieteen laitos. Joensuun yliopisto 2003.

<sup>110</sup> Mellais M. Vapautuvien vankien ylivelkaantumisen Kartoitus vankien velkaantumisesta ja selvittämismahdollisuuksista. Sosiaali- ja terveystieteiden tutkimuskeskuksen selvityksiä 1991:3. Helsinki, 1991.

<sup>111</sup> Laine M. Voidaanko vankeja ja rikollisia kuntouttaa. Katsaus historiaan ja tieteelliseen keskusteluun. Vankeinhoidon koulutuskeskuksen julkaisu 2/1994. Helsinki, 1994. & Laine M. Kuntoutus vankilan tehtävänä. Teoksessa Vankeinhoidon perusteet, s. 123 -136. Vankeinhoidon koulutuskeskuksen julkaisu 4/2002.

<sup>112</sup> Kimmo Hyten, Criminal Sanctions Agency (2004), [http://rikosseuraamus.fi/material/attachments/rise/julkaisut-risenjulkaisusarja/n39KxWVtv/1-2004\\_Vankeusrang\\_uusiminen.pdf](http://rikosseuraamus.fi/material/attachments/rise/julkaisut-risenjulkaisusarja/n39KxWVtv/1-2004_Vankeusrang_uusiminen.pdf)

one of the two states<sup>113</sup>. A survey found, that in nine capital cases, twenty-seven jurors failed to reach an agreement, on whether the defendant is a threat to the society later on. The future threat of the defendant plays a major role, when deciding on whether the inmate is given the death penalty or not. There are two major concerns, that raises from the future-dangerousness. The first concerns is that, is it fair, to sentence someone to death just by assuming, that the person will commit another crime in the future, rather than just punishing the defendant for the actions they have done then and there. The second concerns is that, considering the alternative sentences to death penalty, is capital punishment the most efficient one and exactly how precise can the prediction about the future be? The U.S Supreme Court does still evaluate the statute on its provisions, on whether the jurors should distinguish between those who do and do not deserve capital punishment. There has been only one major change to the Texas statute on these premises, which is that “the sentencers must be allowed to consider as mitigating evidence any factor that may make the person less deserving of a death sentence, even if that evidence suggests the offender will be a greater threat to the community in the future”. These has been a common perspective in corrections, that usually the most well behaved inmates are murderers, but still some of these inmates, who have been serving a very long time in the prison do adapt in negative ways. They become drug users and gang members. A member to the Texas Department of Criminal Justice (TDCJ) noted, that there were eight murders inside the prisons during the year 1999, and three of those were committed by inmates, who were serving life sentences for capital murders<sup>114</sup>. These can be some legitimate grounds for the fact, that maybe death penalty is necessary to incapacitate capital murderers.

Coming back to the prediction about future dangerousness. When the jurors are determining the future threat of the inmate, they rely on three types of predictions 1) clinical 2) amnestic 3) actuarial. The jurors use the help of psychiatrists or psychologists when deciding upon these type of cases. Clinical assessment is the least accurate out of the three predictions. Experts get to know the history of the defendant, whether they have a violent past, they run tests and rely on their expertise and experience. Even though clinical assessment are not accurate sometimes, jurors respect the clinicians, and their saying play a massive role in jury deliberations. Amnestic predic-

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<sup>113</sup> Bedau, H., *The Death Penalty in America; Current Controversies*. New York, Oxford University Press. 1997

<sup>114</sup> Bailey, W., Peterson, R. *Police Killings and Capital Punishment; The Post-Furman Period*. Cleveland State University, 1987

tions are done by examining the inmates previous pattern of behaviour. This is said to be the most accurate one, when forecasting future dangerousness. In order to make an accurate actuarial prediction, whether the defendant will potentially be a threat in the future, one has to know in which society is the defendant gonna be places and for how long<sup>115</sup>.

## 5.5 Execution of the innocence

There has been mistakes made by the courts in capital cases. There can be as much as 100 death row inmates having their sentence vacated each year. In the 20th century, at least 400 inmates were convicted to capital punishment wrongfully. During the years 1973-2007, 123 Americans have been released from the death row, because of evidence of their innocence<sup>116</sup>. Dr Ron Paul states, that since 1973, one out of every ten individuals sentenced to death, has been released, because of DNA evidence has proven them innocent. DNA evidence is not 100 percent true, and it can also be mishandled and even falsified, and DNA evidence is only available in five to 10 percent of criminal cases. <sup>117</sup> There could be revisions made to the current death penalty statutes, which would probably reduce the number of executing an innocent person. These revisions could be, such as limiting the death penalty to the killers, who kill police officers, judges, kids or they kill after using torture to the victim. This would make the number of inmates on death row significantly lower, but is that the goal society want to achieve? Why aim for a smaller amount of punishment, when there still are crimes happening? If the goal is to have as small amount of people on death row as possible, without doing anything about the reason behind, why murders happen, why should there be any ease on behalf of killers ? Revisions to current death penalty statutes will lower the amount of people on death row, but there are no changes or revisions that can be made, that would eliminate entirely the chances of executing an innocent person.

If the goal is to have a certainty that no innocent person is executed, the alternative punishment is life in prison without the possibility of parole. One may argue, that this is by no means better

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<sup>115</sup> Sorensen, J., Pilgrim, R. (2006) *Supra* nota 57 p. 54-68

<sup>116</sup> Bohm, R. *DeathQuest III, An introduction to the Theory and Practice of Capital Punishment in the United States*, LexisNexis. (2007) p. 204

<sup>117</sup> *Criminal Justice Ethics*, Volume 34. EBSCO Publishing (2015)



for anyone, nor does it make the situation in the society any better. There can still be innocent people spending the rest of their lives in prison. Henry Schwarzschild, a former director of the American Civil Liberties Union Capital Punishment Project, described Life in prison without the possibility of parole (LWOP) as “mindless”, “humanly and economically wasteful” and “morally repellant in its very assumption”<sup>118</sup>. On an article written on 07.10.2015, by Beth Schwartzapfel for Marshall Project, Mrs. Schwartzapfel stated, that the United States has the highest incarceration rate in the world, with more than 1,5 million people behind bars. They are struggling to find alternatives to mass imprisonment<sup>119</sup>. In Texas the parole board has full authority, this means, that they have the power to release nearly all state prison inmates before the end of their maximum sentence, with few exceptions. The parole files are kept secret. Execution of the innocence is always a slight chance, and someone loses their life, but the amount of lives saved, because of Capital Punishment is much greater.

Between the years 1973 and 1995, 5760 death sentences were imposed in the U.S. From this 4578 were reviewed on “direct appeals by a state high court. This is 79 %. Of those 1,885 ( 41%) were thrown out, because of a “serious error”. This means, that the reviewing court had seriously undermined the reliability of the outcome, or in other ways “harmed” the defendant. From the death sentences, that survived the state direct and post-conviction review, 599 were reviewed in a habeas corpus petition during the 23 year study period. Out of those 599 people, 237 (40%) were overturned due to serious error. Serious error, is an error that substantially undermines the reliability of the guilt finding or death sentence imposed at trial. During the years 1973-1995, the poll found, that nationally, the overall error-rate in capital punishment system was 68%.

Egregiously incompetent defence lawyering and prosecutorial suppressions of evidence that the defendant is innocence or does not deserve the death penalty, are the usually the errors on the death penalty system<sup>120</sup>. Kirk Bloodsworth spent eight years, eleven months and nineteen days in prison, including two years on death row, after he was exonerated. He was accused of mutilating and killing a nine-year-old girl, but later became the first death row inmate in the history of the

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<sup>118</sup> Bohm, R. (2007) Supra nota 116, p. 205

<sup>119</sup> Schwatzapfel B. The Marshall Project. <https://www.themarshallproject.org/staff/beth-schwartzapfel#.CWS8WGHMq>

<sup>120</sup> Liebman, J., Fagan, J., West, V. A Broken System; Error Rates in Capital Cases, 1972-1995. Columbia Law School, 2000. p.5

United States to be released on the basis of DNA evidence<sup>121</sup>. A comprehensive analysis, done by James Liebman and his colleagues, found, that between the years 1973-1995 all the cases, that had been fully reviewed, 32% of the death sentences were carried out in the end. The remaining 68% of the cases were said to be so seriously flawed, that they had to be reversed, and sent back<sup>122</sup>.

#### 4.4 Lethal Injection and Humanity

One year after the Supreme Court decided on *Gregg V. Georgia*<sup>123</sup>, the state of Texas adopted lethal injection as means of execution in 1977. Oklahoma was the first state to authorise the use of lethal injection, which nowadays consists of a single drop protocol of Pentobarbital or Sodium thiopental, pancuronium bromide and potassium chloride. Oklahoma state representatives Bill Wiseman and the state senator Bill Dawson wanted an alternative for the “inhumane, viscerally brutal and expensive” electric chair<sup>124</sup>. Across the country, people started to support the lethal injection, as it “appeared to be more humane and visual palatable compared to other methods”. People were drawn to the quicker, more humane and sterile method of state killing. When given the lethal injection, the anticipated time of death will be from two to ten minutes, from the time the chemicals enter the body. Texas executed its’ first offender by this method in 1982, the offender executed was Charlie Brooks of Tarrant County, *Charlie Brooks V. Wj Estelle*<sup>125</sup>, the conviction was for kidnap and murder. The average time spend in jail in Texas, before the execution is 10,87 years<sup>126</sup>. Some people hold, that human life has infinite worth, and it must be respected and protected accordingly, from this follows the belief, that death is the greatest devalue

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<sup>121</sup> *Bloodsworth V. Kirk* 543 A.2d 382 (1988)

<sup>122</sup> Baumgartner, F., De Boef, S., Boydston, A. (2010) *Supra* nota 73, p.3

<sup>123</sup> *Gregg V. Georgia* 428 U.S 153 (1976)

<sup>124</sup> Sarat, A. *Gruesome Spectacles; Botched Executions and America’s Death Penalty*. California, Stanford University Press 2004, p.117

<sup>125</sup> *Charlie Brooks V. Wj Estelle*, 697 F.2d 586 (5th Circ. 1982)

<sup>126</sup> Texas Department of Criminal Justice: Death Row facts: [http://www.tdcj.state.tx.us/death\\_row/dr\\_facts.html](http://www.tdcj.state.tx.us/death_row/dr_facts.html)

and murder is the gravest wrong. This rules out the death penalty, but is the life of a murderer as valuable and sacred, as the life of a person who respects the law? The worst murderers can be sociopathic serial murderers and terrorist multiple murderers<sup>127</sup>. Can one say, that all lives are equal, and all lives should be valued and treated the same?

The true efficiency of death penalty can be determined by some steps. The first one is to estimate, how much crime the executions actually do prevent. This is called an attempt to determine the quantity of acts that have not occurred, because of the execution. The way to predict this amount, is to take a look at actions of those, who have been spared from the death sentence. One prime example of this is the action, which came from the previously discussed *Furman V. Georgia*, when the U.S Supreme Court overturned the death penalty. After the release, 600 inmates followed, and they were released from death rows all over the United States (forty-seven out of these inmates were released from death row in Texas). The fifty-year long follow up since their release does provide an indication of the previous inmates propensity for addition violence. 558 inmates were followed, out of these, 6 killed again in prison, out of which 4 were other inmates, and 2 were prison guards. As a group, 325 serious rule violations were committed. 243 of the inmates were released from prison by the time of the follow-up study, spending approximately 5,3 years free. During this time 30 had committed a new felony offence and 1 had killed again. There has been a more recent follow up of the offenders as well. The study showed, that many of the previous death row inmates did not present any continuing threat to the prison community. The overall outcome out of the studies was, that the previous death row inmates were not as dangerous in the future, as one would assume. There are exceptions in all of the studies, one in the forty-seven Furman-commuted inmates and two of a ninety-two post-Furman-commuted inmates committed murders again. This puts the recidivism rate two approximately 2%. The three inmates, who continued killing, murdered seven people in total, that means, that the rate is five murders per 100 former death row inmates. If this number is used as a base for likelihood of recidivism for those, who have been executed in the modern era, then it means that the executions of three hundred inmates by the state has saved at least fifteen lives, which would be the victims of the death row inmates<sup>128</sup>. There are 238 people in death row in Texas in 2017.

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<sup>127</sup> Sarat, A. *The Killing State Capital Punishment in Law, Politics, and Culture*. New York, Oxford University Press 1999 p.41

<sup>128</sup> Sorensen, J., Pilgrim, R. (2006) *Supra nota 57*, p.60

## Conclusion

The different outlooks on capital punishment could be said to be that, is it right, that the government is allowed to decide on taking a person's life? The opinion differ from each other very largely when looking at Finland as a part of the EU and Texas. When Finland has taken a more humane step forward with abolishing the capital punishment year ago, Texas shows no interest on making a change to their manners. The methods of conviction used in Finland are very different from the methods used in Texas. The death penalty system in Texas can be argued to be controversial, when Finland has a support system around it. When Finland and Europe all together has taken many steps towards improvement of human rights, the amount of people in death row has been historically high multiple times in the modern era. The number was significantly high in 2000, when as much a 3,593 people were on death row. In 1980s and 1990s, 80% of American population were in favour of the death penalty.

The question "Are you for or against death penalty" has been asked for years. The answer is usually largely based on their views on biblical or religious teachings, whether they support capital punishment or not. People base their answer on morality, feelings of forgiveness and mercy. Some people see it as "playing God", when some people see it as a proportionate way of punishment. The attitude against death penalty is largely based on the human character. One person can be very familiar with death, and especially with the killing of human beings. There are loads of people, who has seen war, fought on battlefields, and have seen their loved ones, friends and family die by the hands of another persons, or even taken part in killings themselves. People like that, tend to see capital punishment as not that highly cruel and inhumane way of punishment, compared do the people, who have grown up in secure surroundings, who have not taken any part, nor have they seen any organised violence.

What if, a serial killer, who would have deserved death penalty according to the legislations, but was then paroled, or released, would do it all over again. Inmates, who are on death row, are usually there for a reason. Then there are the inmates, who try everything in their power to fight their before-planned destiny. Escaping from a high-security prison is unlikely, but not unheard of. The first escape from death row was in 1934, when three inmates got out with the help of

general population prisoners. One of the inmates was killed six months later, and the other two were returned to the Walls Unit, and then a year later, executed. More recently, in 2000, the “Texas 7” escaped from a maximum-security prison in Texas. All together, those seven inmates were serving nineteen life sentences plus over 180 years for capital murders, rape, robbery, kidnap and so on. According to a survey, conducted by the American Correctional Association, 577 inmates did escape from custody during the year 2000. If the jurisdictions were housing over 1 million inmates, then the likelihood of escape would be less than 6 in 10,000. Furthermore, over 87 % of the escaped inmates were returned to custody. As the statistics show, it is not really a threat for the society, when the inmates are behind bars, the real threat lies among people, when they are not. As I read hundreds of last statements, listed in the Texas Department of Criminal Justice, the emotion, which was expressed the most was remorse. The inmates have spent years in cells, isolated from the world. They start to realise, the outcome of their actions. Texas publishes the last statements.

According to several polls, convicted murderers commit homicides in prison at a rate of approximately 2 per 1,000 inmates per year, or less. This covers murderers serving a term of imprisonment, capital murderers serving life without the possibility of parole and capital murderers commuted from a death sentence. The amount of violent acts among these same inmates was less than 6 acts per 100 inmates per year<sup>129</sup>. People seem to have high expectations, when it comes to death penalty, when in reality the average amount of inmates, who are actually executed is only 1 in 4, and this means that 3 in 4 of the death row inmates die, while waiting for their execution, or they are moved to general prison population, or they are exonerated and removed from incarceration entirely. The American capital punishment system falls shortly, it is a system with a lot of flaws, and which can be easily shaken, stirred and cancelled. There were 8,300 death sentences in the United States between the years 1973-2011, out of these, 3,481 were reversed and 1,277 were executed. This means, that approximately 15,4 % of the death row inmates were executed. Everyone of these inmates, waiting on death row still cost more money to the society, than people, who are paced into the general prisons.

It can be argued, that all the capital defendants, regardless of the nature of their committed crime, are more likely to get the death penalty, if they have the “worst lawyers”. Poor people, who are

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<sup>129</sup> Sorensen, J., Pilgrim, R. (2006) *Supra* nota 57, p. 69

accused of capital crimes cannot afford council on their own. They usually end up with a lawyer, who is not as skilled, doesn't have many resources and lack the commitment to handle such serious matter, as they are dealing with someones life<sup>130</sup>. Then there is the other side of the coin; capital defendants who have the best lawyers are more unlikely to have capital punishment, regardless of their crimes or the government's aggravating circumstances. To be a good lawyer, and to get the client out of situations, such as death penalty, the lawyer needs to have skills to negotiate pleas. They are able to persuade juries to impose life sentences, rather than the death penalty<sup>131</sup>. When one's life becomes that controllable by money, I would have to argue, that death penalty has seen it's best days. Also based on the legislation and state actions, which do apply Europe, which does not use capital punishment as a conviction are safer. The ECHR's Article 2 and Article 3 are basic rights for everybody, with no fear of violation. The death penalty will not be imposed as Article 1 of Protocol No.13 to the Convention is present. The legislations are more humane and practical, and when countries in Europe has same values with other countries, the laws are easier to implement and respect, when comparing to the system in the United States, where the laws are regulated, implemented and respected differently in every state, as some of the states do still keep capital punishment as a working system and some of the state have abolished it long time ago. European Union believes strongly, that capital punishment, is a punishment which is weakening the meaning of human dignity, it adds brutality and doesn't provide value in term of deterrence.

Capital punishment have caused a lot of discussion for multiple years, and it has started to become more of a burden for the states, rather than deterrent. I have to agree, that people, who have committed capital felonies need to be locked away and kept separate from the society, but the death penalty system is a costly, inefficient and a broken system, which unfortunately falls short, and does not run smoothly with the world, as it is now. The numbers speak for themselves too. Most capital punishment supporters believe, that death penalty is more cost efficient than life in prison. This mat have been true at one point, when the executions were swift and sure, but times have changed from that. There are more trial preparation, more time needed to get to trial, the

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<sup>130</sup> Bright, S. Council for the Poor; The Death Sentence Not for the Worst Crime but for the Worst Lawyer. Yale Law Journal 1835 (1994)

<sup>131</sup> White, W. Litigating in The Shadow of Death; Defence Attorneys in Capital Cases. Michigan, University of Michigan Press. 2006 p. 198

jury selections and trials take significantly longer, the appeals are more complicated and frequent, the cases changes nature and so one. These are some of the reasons, why the cost of capital punishment are much higher, compared to life in prison. Capital punishment system can be multiple times the cost of keeping a prisoner in prison for life. Some studies of the California death penalty system have even revealed, that death sentence cost at least 18 times as much as LWOP<sup>132</sup>. States in the U.S, which do practice capital punishment, do spend an average 1,1 million dollars more on death penalty trials, than to a conventional murder trial. Then the state spends an addition 117 million dollars per year on capital punishment<sup>133</sup>.

A potential alternative for capital punishment is indeed LWOP, as it is favoured by many. Capital murderers become eligible for parole, after they have served a minimum of forty years, but the forty years will be a much bigger economical burden of the state, as the inmate is kept on death row, compared to a general prison, where the LWOP inmates are kept. Based on the numerous studies, opinions, statistics and polls death penalty is not an efficient way of punishment. It affects the society economically, and as it can not be proven that the death penalty has a deterring effect on the society, it becomes harder to justify, why is this system, that comes with more trouble, than help, still in the legislation. Capital punishment has come a long way, but as the the world has transformed so rapidly, with new perspectives and new resolutions and legislations, the capital punishment cannot be seen as effective way of punishment any more.

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<sup>132</sup> Death Penalty Focus, an anti-capital punishment advocacy organization, "Myth 1: A Death Sentence Costs Less Than a Life Sentence," [www.deathpenalty.org](http://www.deathpenalty.org)

<sup>133</sup> Supplemental Statement on Repealing the Death Penalty; <http://deathpenalty.procon.org/sourcefiles/supplement-californiacommission2008.pdf>

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## Annexes

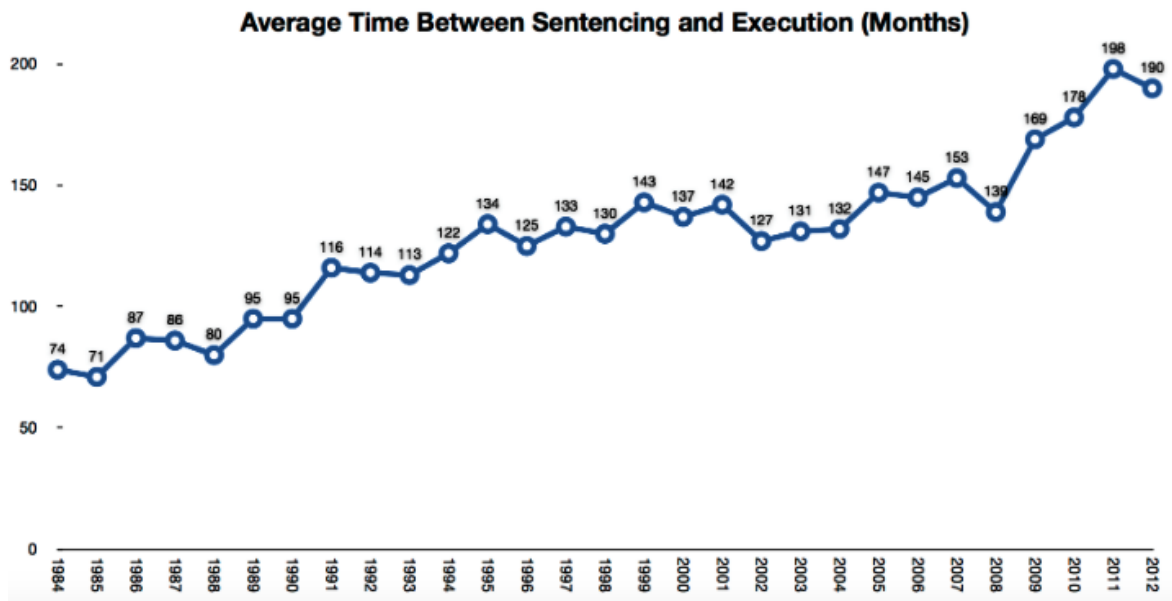
Annex 1. Texas Department of Criminal Justice: [http://www.tdcj.state.tx.us/death\\_row/index.html](http://www.tdcj.state.tx.us/death_row/index.html)

Race	Female	Male	Total
White	3	61	64
	50.0%	26.0%	26.6%
Black	2	104	106
	33.3%	44.3%	44.0%
Hispanic	1	65	66
	16.7%	27.7%	27.4%
Other	0	5	5
	0.0%	2.1%	2.1%
TOTAL	6	235	241
	2.5%	97.5%	100.0%

Annex 2 Texas Department of Criminal Justice: Executions, December 7, 1982 through March 14, 2017 [http://www.tdcj.state.tx.us/death\\_row/dr\\_executions\\_by\\_year.html](http://www.tdcj.state.tx.us/death_row/dr_executions_by_year.html)

2016	5	71%	0	0%	2	29%	0	0%	7	100%
2015	3	23%	4	31%	6	46%	0	0%	13	100%
2014	2	20%	4	40%	4	40%	0	0%	10	100%
2013	5	31%	8	50%	3	19%	0	0%	16	100%
2012	4	27%	7	47%	4	27%	0	0%	15	100%
2011	6	46.00%	3	23.00%	4	31.00%	0	0%	13	100%
2010	7	41.20%	5	29.40%	5	29.40%	0	0.00%	17	100%
2009	4	16.70%	13	54.20%	7	29.20%	0	0%	24	100%
2008	6	33.30%	9	50.00%	3	16.70%	0	0%	18	100%
2007	12	46.20%	8	30.80%	6	23.10%	0	0%	26	100%
2006	5	20.80%	14	58.30%	5	20.80%	0	0%	24	100%
2005	11	57.90%	5	26.30%	3	15.80%	0	0%	19	100%
2004	8	34.80%	12	52.20%	3	13.00%	0	0%	23	100%
2003	14	58.30%	7	29.20%	3	12.50%	0	0%	24	100%
2002	17	51.50%	11	33.30%	5	15.20%	0	0%	33	100%
2001	10	58.80%	6	35.30%	1	5.90%	0	0%	17	100%
2000	19	47.50%	16	40.00%	5	12.50%	0	0%	40	100%
1999	17	48.60%	11	31.40%	7	20.00%	0	0%	35	100%
1998	13	65.00%	2	10.00%	5	25.00%	0	0%	20	100%
1997	21	56.80%	13	35.10%	2	5.40%	1	2.70%	37	100%
1996	1	33.30%	1	33.30%	1	33.30%	0	0%	3	100%

Annex 3 The chart has been taken from the Death Penalty Information Center (<http://www.deathpenaltyinfo.org/time-death-row>)



Annex 4. Average Cost of Death Penalty by Decade: <https://deathpenaltyinfo.org/news/past/16/2016>

