

TIME

Time Magazine: “Why It's So Significant That Virginia Looks Set To Abolish the Death Penalty”



Virginia Gov. Ralph Northam addresses a joint session of the Virginia General Assembly in Richmond, Va., on Jan. 8, 2020. Bill O'Leary—The Washington Post/Getty Images

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Virginia’s use of the death penalty dates back over 400 years—to 1608, when Jamestown settlers carried out the first recorded execution in the then-European colonies. In the centuries since, amid periods of slavery, Reconstruction and Jim Crow segregation, Virginia has executed hundreds of people; since 1976, Virginia has executed 113 people, a higher percentage of death row inmates than any other U.S. state, and the highest number of state executions second only to Texas.

But on Feb. 3 and 5 respectively, Virginia’s Democratic Senate and House of Delegates voted to abolish the state’s death penalty, and Democratic Gov. Ralph Northam has said he plans to sign the bill into law. This would make Virginia the first Southern state to abolish the death penalty.

At the state level, the apparent abolition of Virginia’s death penalty signifies the state’s shifting politics; at the national level, it illustrates how unpopular capital punishment is becoming with the American public—despite the Trump administration’s spree of executions last year. And advocates argue Virginia could be a bellwether of more changes to come.

Virginia’s 20 year shift

The abolition of the death penalty is the latest in a series of progressive actions recently undertaken by the state legislature. In 2019, Virginia’s midterm elections put Democratic lawmakers in the majority for the first time in over two decades, a flip driven in part by the state’s changing demographics and a rebuke of then-President

Donald Trump. The death penalty issue split along party lines in the state Senate, although three Republicans voted in favor of the House's abolition bill on Feb. 5, which [passed](#) 57-41.

Democratic Del. Michael Mullin, who sponsored the House bill, tells TIME that he does not think abolition would have been possible without the public support of Gov. Northam. For years opposition to the death penalty in the Virginia could hinder a politician's standing; when Democrat Sen. Tim Kaine was Governor between 2006 and 2010, he presided over [11 executions](#), despite saying he personally opposed the practice. Northam, on the other hand, called for an end to capital punishment in his State of the Commonwealth address in January.

"There have been people who have put abolition forward for the better part of four decades," Mullin says. "But we've never had a Governor who went out forcefully and with a full throated approach to abolish the death penalty."

While [22 U.S. states](#) have already banned the death penalty, they're largely places "that never sentenced very many people to death to begin with," says Brandon Garrett, a professor of law at Duke University School of Law and the author of *End of its Rope: How Killing the Death Penalty Can Revive Criminal Justice*.

Virginia, on the other hand, was a prolific executioner for decades. This was in part because it had some of the strictest procedural rules in the country, including a rule that a defendant's legal claims could be denied judicial review if their lawyer missed a filing deadline. This meant that poorer defendants who couldn't afford more experienced attorneys were more likely to be executed without "any meaningful review of their cases," argues Robert Dunham, the executive director of the nonprofit Death Penalty Information Center. In other cases, judges also did not clarify that recipients of a life sentence could be deemed ineligible for parole, Dunham continues, arguing that some juries might have imposed death sentences "because they thought it would be too dangerous to let [the defendant] return to the streets."

But in 1999 the Virginia Supreme Court ruled in [Yarbrough v. Commonwealth](#) that judges had to inform their juries that they could impose a sentence of life without parole. Around the same time, the state legislature began establishing regional capital defender offices, which provided defense specifically for people facing capital charges (and were well versed in the deadlines and requirements they had to meet). The impact was striking: "All of a sudden... the prosecution is losing about half the time when they seek the death penalty, and jurors aren't imposing life sentences," says Garrett.

Virginia now hasn't imposed a death sentence since 2011 and hasn't executed someone since 2017. There are just two men on Virginia's death row; both of them are Black. [A Feb. 2 poll](#) by Christopher Newport University also found that 56% of Virginians now support repealing the death penalty.

Advocates point to several reasons for the state's changed stance. Capital trials—and the numerous appeals that are usually filed afterwards—are costly, and a growing number of conservatives have come to oppose the practice on fiscal grounds. “We've done an awful lot of hard work over the [years] to build support among a very broad coalition,” says Michael Stone, executive director of advocacy group Virginians for Alternatives to the Death Penalty. “We have built support among libertarians, among Republicans, among prosecutors, within the faith community and with murder victims' family members.”

Rev. LaKeisha Cook, a justice reform organizer at the Virginia Interfaith Center for Public Policy, says that 2020's mass Black Lives Matter protests, as well as the federal government's [spree](#) of 13 executions in the last seven month of President Trump's term, proved “the perfect storm” for creating momentum to end capital punishment in Virginia. “I believe that racial justice issues and capital punishment was pushed to the forefront of people's minds and conversations,” she explains.

“The Virginia legislature is finally catching up with public opinion here in the commonwealth,” Mullin adds. “I think that a large majority of Virginians believe that the death penalty is inherently racist, unfair and can't be executed in a proper fashion.”

‘The slow death of the American death penalty’

Like in much of the rest of the U.S., Virginia's death penalty has historically been used to enforce a system of white supremacy. There is a direct “connection between our current modern day capital punishment, and our nation's history with lynching, slavery and Jim Crow,” says Cook.

[Per the Death Penalty Information Center](#), between 1900 and 1977, Virginia executed 73 Black defendants for convictions of rape, attempted rape or armed robbery that did not result in death. No white Virginians were executed for those crimes.

In one infamous example, Virginia [executed](#) seven Black men in 1951 after they were convicted of raping a white woman by an all-white jury—the largest recorded mass execution in the state's history. “At a time when African Americans were beginning to assert their civil rights vigorously, the executions provided a stark reminder of the harsh

treatment reserved for Blacks who violated southern racial codes,” wrote historian Eric W. Rise in his 1992 [article](#) “Race, Rape, and Radicalism: The Case of the Martinsville Seven, 1949-1951,” in the *Journal of Southern History*.

Studies show race still plays a role in modern day capital cases. A [2015 University of North Carolina and Georgetown Law Center study](#) of U.S. executions between 1976 and 2013 found that the race of a crime’s victim is the “single most reliable predictor of whether a defendant in the USA will be executed.” Defendants were rarely executed if their victim was a Black, the study found, while several other studies found that defendants who killed white Americans were more likely to receive a death sentence.

The growing awareness of the role race plays in the criminal justice system has helped decrease support for capital punishment in the American public, argues Henderson Hill, a senior staff attorney at the American Civil Liberties Union’s (ACLU) Capital Punishment Project. In the mid-1990s, [Gallup found](#) that 80% of Americans were in favor of the death penalty for a person convicted of murder. In Gallup’s 2020 poll of the same question, 55% of Americans supported it.

“If you go back to the late 1980s or early 1990s, the conversation about capital punishment was driven by a kind of tough on crime rhetoric, combined with a kind of high moralism,” says Austin Sarat, a professor of law at Amherst College. But over the decades that rhetoric shifted. People are also now more aware of the at least [174 death row exonerations](#) that have occurred since the 1970s, including the exoneration of Virginian Earl Washington, who was released in 2000 after spending [17 years in prison](#).

The public perception of capital punishment used to be as a consequence for “crime waves in cities,” says Sarat. Today, he argues that people are more likely to think of “someone being released from death who was falsely convicted.”

And if abolition can gain steam in a Southern state like Virginia, advocates argue it can gain traction elsewhere. Coalitions in other Southern states like [North Carolina](#) have been organizing around the issue for years and feel buoyed by Virginia’s momentum. As Garrett puts it: “for a heartland death penalty state to end up in [this] place..... I think that really in a nutshell encapsulates the slow death of the of the American death penalty.”