

## Pennsylvania’s Death Penalty

# The Department’s Position

The Pennsylvania Department of Corrections has no position on the death penalty. As an agency responsible for carrying out sentences imposed by the courts, it would be inappropriate to take sides on the issue of capital punishment.

**History**

Executions in Pennsylvania were carried out by hanging from the time the first colonists arrived in the late 1600s. In 1834, Pennsylvania became the first state in the union to abolish public hangings; and, for the next eight decades, each county was responsible for carrying out its own "private hangings" within the walls of its county jail. The responsibility for executing capital cases passed to the state in 1913 when the electric chair took the place of the gallows.

The location of the chair selected by the state legislature was the new Western Penitentiary in Centre County, now known as the State Correctional Institution (SCI) at Rockview. Although capital punishment by electrocution was authorized by legislation in 1913, neither the chair nor the institution were ready for occupancy until 1915.

From 1915 until 1962, there were a total of 350 persons executed in the chair, two of whom were women. The last person to be so executed was Elmo Smith, a Montgomery County case tried on a change of venue in Gettysburg, Adams County. Smith was executed on April 2, 1962, for the rape/slaying of a seventeen-year old girl. Coincidentally, the first person executed in the chair, John Talap, also was sentenced in Montgomery County.

**Status of the Chair**

On November 29, 1990, Gov. Robert P. Casey signed legislation changing Pennsylvania's method of execution from electrocution to lethal injection. The electric chair and all of its associated equipment were removed from the capital punishment complex at SCI Rockview in December 1990 and subsequently turned over to the Pennsylvania Historical and Museum Commission. Facilities at SCI Rockview were renovated, and Department of Corrections policy was revised to accommodate the new method of capital punishment. On May 2, 1995, Keith Zettlemoyer became the first person executed by lethal injection in Pennsylvania. Since that date, two additional men have been executed by lethal injection.

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**The Death Penalty Statute**

The 1913 law establishing capital punishment in Pennsylvania was declared unconstitutional by former Attorney General Fred Speaker in an opinion issued in January 1971.

Shortly afterward, newly appointed Attorney General J. Shane Creamer rescinded Speaker's opinion, concluding that the fate of the death penalty should be decided by the legislature or the courts, not by the attorney general.

In the following year, the state Supreme Court made that decision. Using as precedence the U.S. Supreme Court decision in Furman v. Georgia, a case heard earlier in 1972, the state court ruled in Commonwealth v. Bradley that the death penalty sentencing procedures were unconstitutional. At that point, there were some two dozen death cases in the state prison system. All were sentenced to life.

In 1974, the legislature resurrected the law with amendments passed over the veto of Governor Milton Shapp. Thirteen execution cases were received by the Pennsylvania correctional system before the state's high court again declared the law unconstitutional in a December 1977 decision in the case of Theodore Moody. Relying on the U.S. Supreme Court decision in Gregg v. Georgia, the court decided that the 1974 version of the death penalty too narrowly limited the circumstances which the jury may consider mitigating when making its decision on capital punishment.

The state legislature quickly drafted a new version. It was enacted in September 1978, again over the veto of Governor Shapp. This law, which remains in effect today, has been upheld in several appeals to the U.S. Supreme Court.

**How Does the Law Work?**

The death penalty only may be applied in cases where a defendant is found guilty of first degree murder. A separate hearing is held for the consideration of aggravating and mitigating circumstances. If at least one of the ten aggravating circumstances listed in the law and none of the eight mitigating factors are found to be present, the verdict must be death.

The next step is formal sentencing by the judge. Frequently, there is a delay between the sentence verdict and formal sentencing as post-trial motions are heard and considered. An automatic review of the case by the state Supreme Court follows sentencing. The court can either uphold the sentence or vacate for imposition of a life sentence.

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If the Supreme Court affirms the sentence, the case goes to the Governor's Office where it is reviewed by appropriate legal counsel and, ultimately, by the Governor himself. Only the Governor may set the execution date, which is done through the signing of a document known as the Governor's Warrant. By law, all executions are carried out at the State Correctional Institution at Rockview.

**Status of Capital Cases**

For security purposes, all execution cases are assigned to administrative custody status and are housed at SCI’s Graterford and Greene. Female capital cases are housed at SCI Muncy under the same security conditions as at the male institutions.

Prior to the creation of the Bureau of Correction (now the Department of Corrections) in 1953, capital cases were brought to Rockview, along with the Governor's Warrant, on the day of the execution. After the bureau came into existence, it became common practice for the persons sentenced to death to be transferred to state custody as soon as formal sentencing by the judge had taken place. Until 1971, these cases were held in maximum security status, usually at Eastern or Western Penitentiary and sometimes at Graterford, until the execution date. Early in 1971, Attorney General J. Shane Creamer ordered them released into general population since no warrants had been signed for a number of years. Due to the increasing number of capital cases and concerns about security, the bureau returned all capital cases to administrative custody status late in 1982.

In June 1997, the execution complex at SCI Rockview was moved outside of the facility's perimeter to a former field hospital. The building, which is located on prison grounds, was renovated into a maximum-security building which houses capital cases for a short period of time just prior to execution. The relocation allows officials to prepare for and carry out executions without disrupting the day-to-day operation of SCI Rockview. The relocation also enhances the safety and security of witnesses because it doesn't require them to enter the facility to view an execution. There are three cells located within this complex. If an execution is imminent, the condemned will be housed in this area until the sentence is carried out.

On Feb. 13, 2015, Gov. Tom Wolf announced his decision to grant temporary reprieves in each future instance in which an execution for a death row inmate is scheduled. Issuance of temporary reprieves will continue in such cases until the Governor has received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Commission on Capital Punishment, established under Senate Resolution 6 of 2011, and there is an opportunity to address all concerns satisfactorily. For death row inmates, the conditions and confinement will not change.

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