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Study draft decries execution appeals process

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By Richard Willing, USA TODAY

WASHINGTON — Death-sentence appeals take too long, traumatize victims' families and burden states with millions in extra costs for housing convicted killers, a draft of a new study commissioned by the Justice Department shows.

The study also found that death penalty cases are not hopelessly flawed by errors, as opponents of capital punishment have charged.

The study, which reviewed state death sentences issued in the 1990s, found that 26% were reversed during the first level of the appeals process. Most of those "direct appeals" were rejected because of sentencing errors. Some of the death sentences were later reinstated.

In only 11% of those cases did the appeals court find problems with the underlying murder convictions, says the unreleased study by Barry Latzer and James Cauthen, professors at the John Jay College of Criminal Justice in New York.

USA TODAY obtained a draft of the study.

The study challenges a 2000 report that concluded the capital punishment system is "broken" because 68% of all death penalty cases from 1973 to 1995 were eventually overturned. The report, by a team led by Columbia University law professor and death penalty foe James Liebman, also found 41% of cases were reversed during direct appeals.

The Liebman study provided a false picture of the death penalty because it included many cases from the 1970s and 1980s, when the U.S. Supreme Court rewrote death penalty rules and caused many sentences to be reversed, the Justice Department's report says.

Latzer and Cauthen tracked 1,676 death sentences issued in 14 "representative" states from 1992 through 2002. Among the report's other findings:

- Half of all death penalty appeals take nearly three years to be decided by state appeals courts. Federal review, which follows state appeals, can extend the process by years.
- Virginia settles death penalty appeals fastest, in a median time of 295 days.
- Ohio, Tennessee and Kentucky were the slowest states, each taking more than three years to resolve appeals.
- States pay an average total of \$274,000 in housing costs for every prisoner they execute.

Death penalty supporters say the study shows that delays are part of a strategy to undermine a sentence that most Americans support.

"Opponents of the death penalty can't get an outright repeal anywhere, but are working to impede the process by slowing it down to a crawl," says John McAdams, political science professor at Marquette University in Milwaukee.

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Capital punishment foes say the lengthy appeals process may in itself be an argument for abandoning the death penalty.

"If you like bureaucracy, you'll love the death penalty," says David Elliot, spokesman for the National Coalition to Abolish the Death Penalty.

The death penalty study was commissioned in 2005 by the National Institute of Justice, the Justice Department's research arm, to find ways to speed up the execution process.


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