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# Death Penalty in the state of Georgia

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## Death Penalty in the state of Georgia

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## Home

### Overview

Capital punishment is a long-standing tradition in the United States. Over the years the practices and procedures have varied, and a number of states have banned it or declined to exercise the practice. The Supreme Court of the United States has for the time being declared it constitutional. A number of landmark Supreme Court decisions came from cases originating in Georgia. This guide serves as a starting point for researching the death penalty, and specifically, the death penalty in Georgia.

For a capital punishment fact sheet about the practice in the United States [click here](#).

### Disclaimer

This research guide is a starting point for a law student or an attorney to research the area of Capital Punishment. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

### Scope of Topic

This guide will cover Capital Punishment law in the state of Georgia. It is merely a starting point, and not all federal cases that apply to Georgia will be covered. State death penalty procedures that have been struck down will not be covered if they do not apply to Georgia's death penalty procedures.

### About the Author

Lauren Pendley is a third year law student at Georgia State University. Upon completing her JD in May 2012, she intends to pursue a career in Criminal Law.

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## Primary Sources

## US Constitutional Provisions

There are some provisions of the US Constitution that directly apply to capital punishment. Constitutional grounds for objecting to the death penalty are usually based on the following:

- U.S. Const. amend. IV. " In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."
- U.S. Const. amend. VIII. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
- U.S. Const. amend. XIV. "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## Georgia Statutes

After the Furman Supreme Court decision, Georgia adopted new statutory procedures to overlook the death penalty process. Going to the source of the death penalty process in Georgia is essential when researching. The statutes can be found at the following cites.

### O.C.G.A.

- Title 17 Criminal Procedure
  - Chapter 10 Sentence and Punishment
    - Article 1 deals with Sentencing and Punishment generally O.C.G.A. §17-10-1 through §17-10-20.
    - Article 2 deals with the Capital Punishment O.C.G.A. §17-10-30 through §17-10-44.
    - Article 3 deals with the Mentally Incompetent and Capital Punishment O.C.G.A. §17-10-60 through §17-10-71.

## Federal Cases

Here are some of the landmark federal decisions for capital punishment. This list is by no means exclusive. There are numerous other capital punishment procedural systems used by other states that have been upheld or overturned by the Supreme Court. This guide focuses on the decisions directly involving the procedural system that Georgia uses.

### Furman v. Georgia 408 U.S. 238 (1972)

- Court ruled in a 5-4 decision that as applied, the DP was unconstitutional. Each justice filed their own concurrence or dissent. This decision put a virtual moratorium on the death penalty and forced the states to rethink their capital punishment procedures. The court focused on on the unacceptable arbitrariness of the procedures and whether they are discriminatory and capricious under the 8th amendment cruel and unusual clause. The court also considered a proportionality requirement from the crime to the punishment under the 8th amendment.

### Gregg v. Georgia 428 U.S. 153 (1976)

- Supreme Court upheld the new procedures Georgia put in place for administering capital punishment. The Court noted that objective criteria must be in place to limit the administration of the death penalty. They also noted that the scheme must have a feature in place to allow the fact finder to consider the defendant's character. Georgia's new scheme included these features. They had implemented an aggravating factor system, where the crime must have included one of ten possible aggravating factors before it was a death penalty eligible crime. The scheme also included a bifurcated trial, where guilt was established in a separate phase from the punishment phase. During the punishment phase, the fact finder gets to hear evidence in mitigation and aggravation and decides whether the defendant gets the death penalty. The Court also considered schemes from Texas and Florida in this decision. All three schemes were approved.

### Coker v. Georgia 433 U.S. 584 (1977)

- Supreme Court ruled that capital punishment for adult rape was unconstitutional.

Atkins v. Virginia 536 U.S. 304 (2002)

- Supreme Court ruled that the execution of mentally retarded defendants was unconstitutional.

Roper v. Simmons 543 U.S. 551 (2005)

- Supreme Court ruled that the execution of those under the age of 18 when the crime was committed was unconstitutional.

Kennedy v. Louisiana 554 U.S. 407 (2008)

- Supreme Court ruled that capital punishment for child rape was unconstitutional.

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## Secondary Sources

### Annotated Sources

American Jurisprudence (Am. Jur.) is a legal encyclopedia and a great legal resource. It includes short summaries on topics and is a great starting point. It is not as detailed, as it covers a wide range of topics, but provides an overview of the material.

- 21A Am. Jur. 2d Criminal Law § 883-889. This section looks at the constitutional restraints on the death penalty, specifically the 8th amendment and the crimes that rise to the level of capital punishment.
- 21A Am. Jur. 2d Criminal Law § 890-898. This section focuses more on the procedures that guard against an arbitrary and capricious death penalty sentence.

Corpus Juris Secundum (C.J.S.) is also a legal encyclopedia that includes summaries and overviews of a wide variety of topics.

- 24 C.J.S. Criminal Law § 2110-2137. This article provides another overview of death penalty law in regards to the matters considered, the evidence standards, and the procedures involved.

Criminal Practice Manual is another great resource for learning about capital punishment. It includes up to date case law and strategies for dealing with a capital punishment trial. As it is focused on criminal law, and more specifically criminal practice, it provides a more detailed analysis of capital punishment schemes and procedures.

- 3 Crim. Prac. Manual § 102:53-102.62. It provides a more detailed analysis of the capital punishment procedural systems and instructions on how to navigate a capital punishment trial.

### Georgia Specific

Georgia Procedure. This resource provides analysis of Georgia law on specific topics.

- 11 Ga. Proc. Criminal Procedure § 28:33-28:50. Georgia specific analysis of capital punishment law and the procedures that go along with it. It mostly covers the sentencing procedures, but can be a very helpful tool in looking at Georgia's capital punishment scheme specifically.

### Law Review Articles

Here are a few law review articles that analyze the current issues in the death penalty system today.

Lindsey S. Vann, [History Repeats Itself: The Post-Furman Return to Arbitrariness in Capital Punishment](#), 45 U. Rich. L. Rev. 1255, 1256 (2011).

- This article takes a look at the Furman decision and whether or not it really succeeded in eliminating arbitrariness in the capital punishment process.

Alec T. Swafford, [Qualified Support: Death Qualification, Equal Protection, and Race](#), 39 Am. J. Crim. L. 147, 149 (2011).

- Interesting article that looks at the jury selection process in capital punishment cases and the threat of racial discrimination still prevalent in the death penalty system.

## Books

There are a ton of books available on the death penalty. Here are a few that might be helpful or interesting.

- Peculiar Institution by David Garland  
ISBN: 0674057236  
Publication Date: 2010-10-01 This book studies the capital punishment system in the US. It attempts to explain why the death penalty fits the US and why we cannot seem to abandon it even when popular opinion swings against it.
- Voices of the Death Penalty Debate by Russell G. Murphy  
ISBN: 1600421083  
Publication Date: 2010-05-01 This book presents both sides of the capital punishment debate. It includes opinions from a wide range of people as well as facts and statistics about the death penalty.
- Most Deserving Death? by Kenneth Williams  
ISBN: 0754678857  
Publication Date: 2012-03-01 A look at the Supreme Court's decisions on capital punishment.

## Blogs

Blogs can be a helpful tool in keeping up to date with the current issues. Keep in mind that these blogs are generally biased and either against or for the death penalty.

- Death Penalty News  
<http://deathpenaltynews.blogspot.com/>  
This blog covers news from around the world involving capital punishment and is geared toward the world wide abolition of the death penalty. It mostly contains summaries of news involving the death penalty and links to articles and stories.
- Death Penalty Focus  
<http://www.deathpenalty.org/article.php?class=20&list=class>  
This blog is dedicated to finding alternatives to the death penalty. It provides more commentary and opinion along with the news stories and links it provides.
- Amnesty International  
<http://blog.amnestyusa.org/category/deathpenalty/>  
Amnesty International's death penalty section of their blog. It blog provides commentary and opinion articles on the death penalty and links to news stories.
- Death Penalty Information Center  
<http://www.deathpenaltyinfo.org/>  
This website covers news, books, articles and anything else news worthy relating to the death penalty. It is run by a non-profit organization and unlike most of the other blogs listed, does not appear to have taken sides on whether or not the US should utilize the death penalty. It also includes facts about the death penalty, including state by state break-downs, and a podcast.

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## Interest Groups and Organizations

### Georgia Specific

- Georgians for Alternatives to the Death Penalty  
<http://www.gfadp.org/>  
"GFADP is working to end capital punishment in Georgia and around the world.  
  
We are a strong, diverse, statewide, grassroots movement which: opposes individual executions; supports legislative initiatives aimed at reducing the application of the death penalty until it is ultimately abolished; protects the humanity of individuals on death row; educates our fellow Georgians about the death penalty; provides concrete action steps for individuals and groups."  
  
-GFADP website
- Georgia Death Penalty Assessment and Report  
[http://www.americanbar.org/groups/individual\\_rights/projects/death\\_penalty\\_moratorium\\_implementation\\_project/death\\_penalty\\_assessments/georgia.html](http://www.americanbar.org/groups/individual_rights/projects/death_penalty_moratorium_implementation_project/death_penalty_assessments/georgia.html)  
The American Bar Association did an assessment and report on the death penalty in Georgia as a part of their Death Penalty Moratorium Project. More info on their assessment of Georgia and about the project can be found at the above link.

### National Groups

- National Coalition to abolish the Death Penalty

<http://www.ncadp.org/index.cfm?content=7>

One of the nation's oldest organizations dedicated to the abolition of capital punishment.

- Death Penalty Information Center

<http://www.deathpenaltyinfo.org/category/categories/states/georgia>

This non-profit organization seeks to inform citizens about the death penalty process. Their website includes lots of information and facts about the death penalty in the US.

## Southern Groups

- The Law Office for the Southern Center for Human Rights

[http://www.schr.org/death\\_penalty](http://www.schr.org/death_penalty)

This organization represents those on death row.

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