

**Capital Punishment
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Kansas Death Row Experience in Its National Context

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Kansas Death Row Experience in Its National Context

The Kansas prison system has no dedicated death row unit, instead the state practices administrative segregation (automatic solitary confinement) within its correctional facilities.¹ There are currently 9 male inmates sentenced to death in Kansas. Male death row inmates are housed and executed at the El Dorado Correctional Facility. If there were a female inmate, she would be housed in the Topeka Correctional Facility and moved to El Dorado for her execution.² The size of these cells is only as big as the average parking space - 82 square feet.³ The average age of these men is 52 years old. Of their average 52 years alive, they spend an average of 12 years in their cell.⁴

Death row inmates are allowed one hour of free time a day, in which they enter the general facility to exercise or to take a shower. However, they are kept separate from each other. When the inmates are out of their cells to exercise, the exercise is done alone in a small wire-enclosed outdoor space. Until September 2001, the death row inmates could converse with each other from their cells, but that is no longer possible.⁵ Exceptions to these rules occur in the event

¹ Kansas Coalition Against the Death Penalty. "Death Row." Kansas Coalition Against the Death Penalty. Retrieved April 20, 2021, from <https://ksabolition.org/facts/death-row>.

² Death Penalty Information Center. "Kansas." Death Penalty Information Center: State and Federal Info. Retrieved April 20, 2021, from <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/kansas>.

³ SCOTT CHEEVER and SIDNEY GLEASON v. JEFFREY ZMUDA, Secretary of the Kansas Department of Corrections, SAM CLINE, Warden, El Dorado Correctional Facility, and SHANNON MEYER, Warden, Lansing Correctional Facility. Case No. 2:20-cv-2555 in the United States District Court for the District of Kansas at Kansas City. Filed November 11, 2020. Retrieved May 03, 2021, from <https://files.deathpenaltyinfo.org/documents/Kansas-Death-Row-Conditions-Lawsuit-DKansas-2020-11-06.pdf>.

⁴ Cherylca. "Capital Punishment Information." Kansas Department of Corrections. Last modified December 09, 2016. Retrieved May 03, 2021, from <https://www.doc.ks.gov/newsroom/capital>.

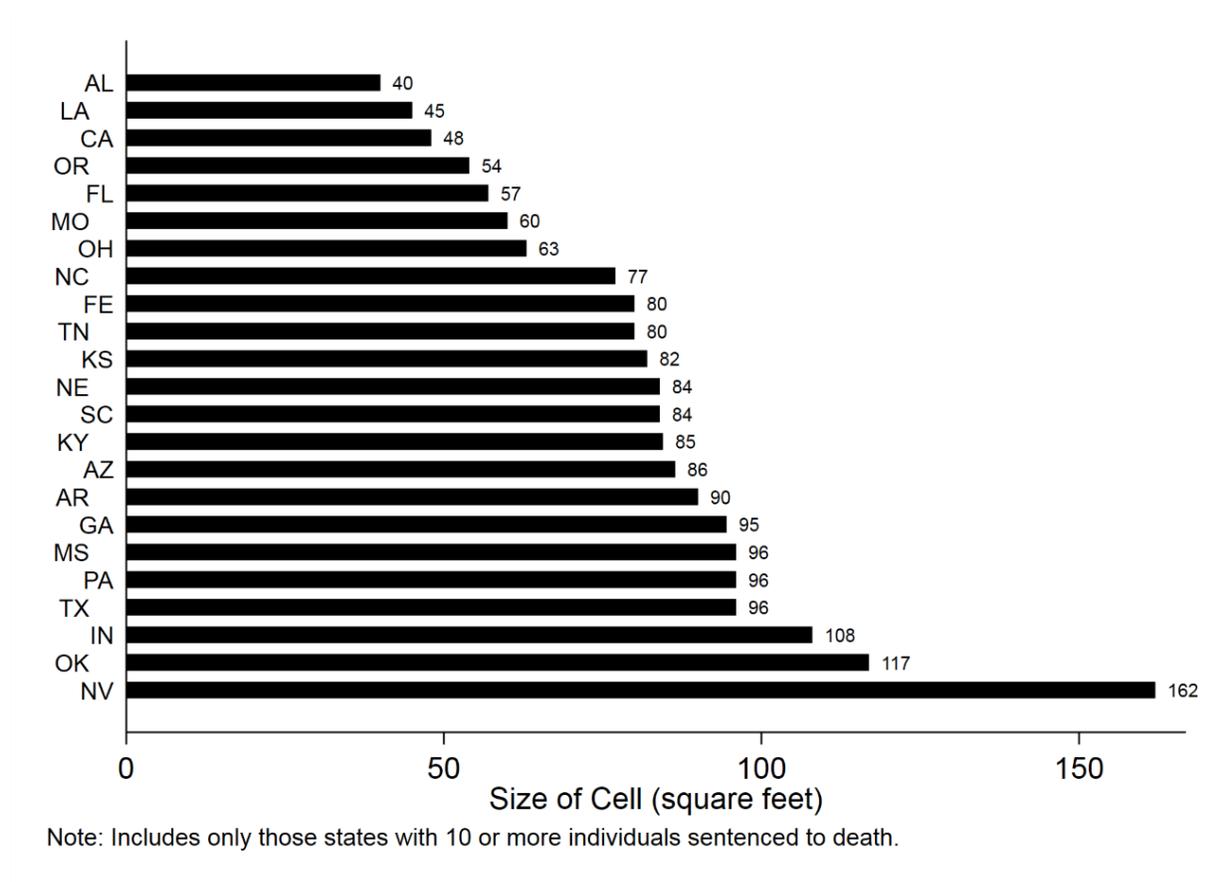
⁵ Kansas Coalition Against the Death Penalty, "Death Row."

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the prisoner receives a visitor, which is limited to Saturdays, Sundays, and special holidays. For meetings with their families or lawyers, death-sentenced prisoners are behind glass and tightly shackled.⁶

Kansas Has an Average Cell Size Compared to Other States



⁶ Cherlca, “Capital Punishment Information.”

⁷ Appendix: <https://docs.google.com/spreadsheets/d/1WJvubgAMRpedbqzGmoWY-QTbqyZRTtGLOcj5SHzlmfg/edit?usp=sharing>

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In comparison to other states nationwide, Kansas holds its death row inmates in averaged sized cells. The figure above shows 9 states that hold their death row inmates in cells smaller than Kansas' 82 square feet: Tennessee, Alabama, Louisiana, California, Oregon, Florida, Montana, Ohio, and North Carolina. However, 12 states hold its inmates in cells greater than 82 square feet. States such as Arkansas, Georgia, Mississippi, Pennsylvania, Texas, Indiana, Oklahoma, and Nevada hold their inmates in cells that are 90 square feet or greater.

Kansas' cell size may be considered average, but it is still a difficult living condition for inmates sentenced to death. Being trapped in such a tight space and isolated from others have proven to cause torturous mental health effects over time, including: sensory deprivation, anxiety, depression, paranoia, visual and auditory hallucinations, obsessive thoughts, post-traumatic stress disorder, suicide, and psychosis.⁸ On November 6, 2020, death row inmates, Sidney Gleason and Scott Cheever, filed a lawsuit against the Kansas Department of Corrections, claiming its solitary confinement practices are extreme, debilitating, and inhumane. Gleason has been living in confinement for 14 years while Cheever has been living in it for 12 years.⁹ During their time in solitary, they describe their experiences to be equivalent to living in a small cage.¹⁰

⁸ Haney, C., & Lynch, M. (1997). "Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement," *New York University Review of Law and Social Change*, 23, 477-570, https://socialchangenyu.com/wp-content/uploads/2017/12/Craig-Haney-Mona-Lynch_RLSC_23.4.pdf.

⁹ Death Penalty Information Center. "Kansas Death-Row Prisoners File Suit Challenging Conditions of Confinement." *Death Penalty Information Center*. <https://deathpenaltyinfo.org/news/kansas-death-row-prisoners-file-suit-challenging-conditions-of-confinement>.

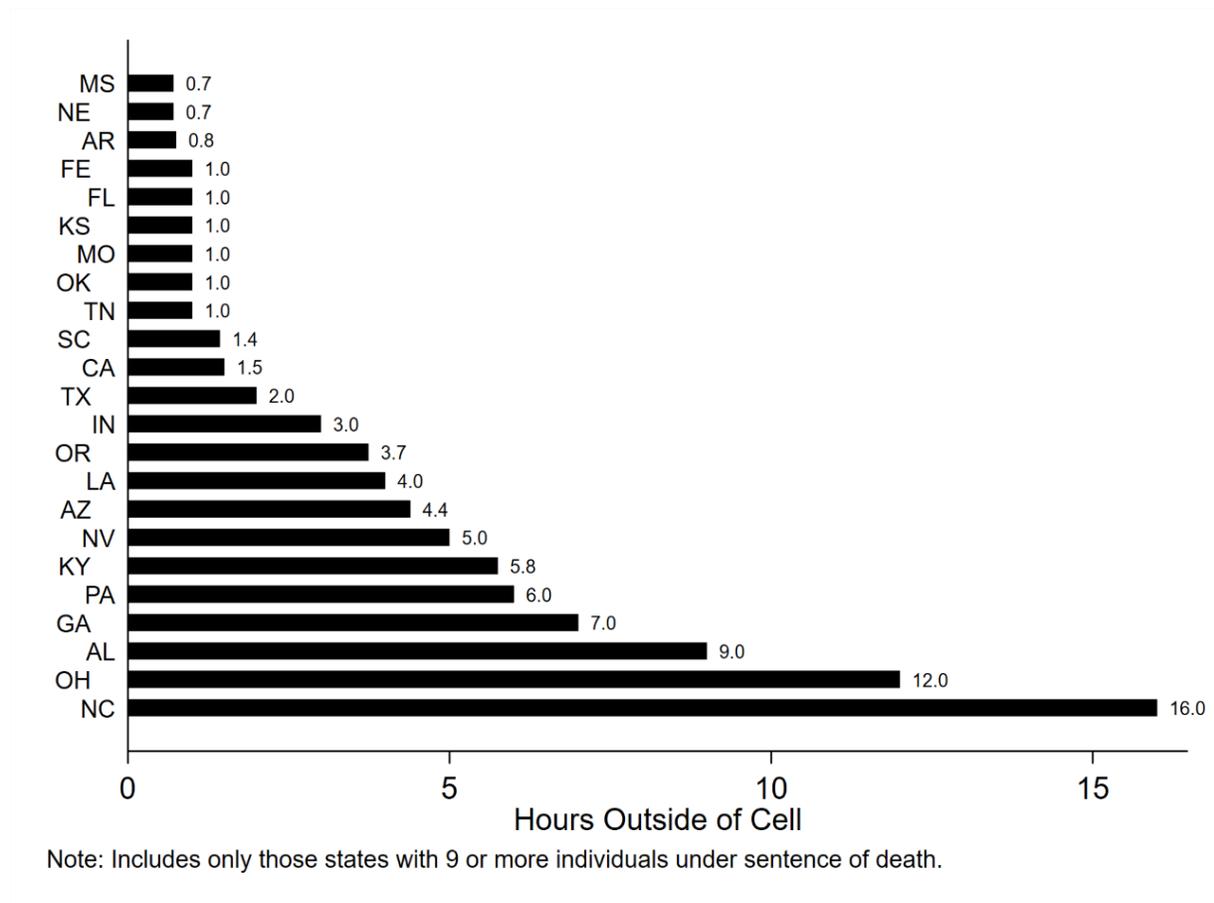
¹⁰ "Kansas Death-Row Prisoners File Suit Challenging Conditions of Confinement."

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As a result of living in these cells, Gleason and Cheever state that they experienced both psychological and physical trauma.¹¹

Kansas Allows Inmates Little Time Outside of Cells



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¹¹ "Kansas Death-Row Prisoners File Suit Challenging Conditions of Confinement."

¹² Appendix: <https://docs.google.com/spreadsheets/d/1WJvubgAMRpedbqzGmoWY-QTbqyZRTtGfOcjSSHZlmfg/edit?usp=sharing>; CPSR data collection Alabama (2022).

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Death row inmates throughout the United States are allowed to occasionally leave their cells in order to exercise, shower, or obtain jobs within the prison. Ohio, however, does not let its death row inmates leave their cells. Kansas, like Montana, Oklahoma, Tennessee, South Carolina, and Florida, only allows its death row inmates to leave their cells for one hour a day. Texas allows their inmates to leave for 2 hours a day, and death row inmates in states such as Oregon, Nevada, Kentucky, Louisiana, Pennsylvania, and Georgia, Alabama are allowed to leave their cells between 4 to 9 hours a day.

There are two solitary confinement outliers. Ohio death row inmates can leave their cells up to 12 hours a day. Ohio prisons allow them to have visitors, and they are allowed to obtain jobs within their facilities.¹³ More notably, North Carolina allows its inmates to leave their cells up to 16 hours a day. The extended time is due to North Carolina death row inmates having access to a “day room” that is adjacent to their cells.¹⁴ Day rooms provide inmates with more living space and access to television.¹⁵ If the North Carolina Department of Corrections understands the significant free time discrepancy it holds with other states, it may choose to limit this necessary freetime so as to not appear “soft on crime.” As shown by how little free time is allotted to death row inmates throughout the United States, it is more popular for state prison systems to put public image over a person’s basic mental health and well-being.

¹³ Pontier, M. “Cruel But Not Unusual The Automatic Use of Indefinite Solitary Confinement on Death Row: A Comparison of Housing Policies of Death-Sentenced Prisoners and Other Prisoners Throughout the United States.” *Texas Journal on Civil Liberties and Civil Rights*, 26 (1), 2020.

¹⁴ “Death Penalty.” *North Carolina Department of Public Safety*, <https://www.ncdps.gov/adult-corrections/prisons/death-penalty>.

¹⁵ “Death Penalty.”

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Death row inmates are always at risk of being further confined, leaving them trapped in their cells for a majority of their lives. According to the Gleason and Cheever lawsuit, Kansas' one hour of exercise is usually inconsistent, only granted to them four to five days a week.¹⁶ Sometimes death row inmates are only allowed free time in the middle of the night, preventing them from seeing daylight.¹⁷ Death row inmates are also “not given opportunities to practice congregate religious activity, educational or self-improvement programs, or hold a prison job”.¹⁸ As of January 21, 2021, the Kansas Department of Corrections has moved to allow death row inmates to be eligible to be in the general population. It is not known as to whether this change was due to the Gleason and Cheever lawsuit or internal change within the Kansas Department of Corrections.

Other states seem to be making changes as well. Death row inmates in Louisiana have been given permission to socialize face-to-face. In 2017, inmates filed a class-action lawsuit, claiming that the original 23 hours of solitary confinement violated their constitutional and civil rights. Louisiana State Penitentiary at Angola agreed to let its death row prisoners out for at least four hours a day, have an hour-long communal lunch five days a week, have at least five hours of outdoor yard time per week, group worship once a week, and access to educational courses.¹⁹ In

¹⁶ “Kansas Death-Row Prisoners File Suit Challenging Conditions of Confinement.”

¹⁷ “Kansas Death-Row Prisoners File Suit Challenging Conditions of Confinement.”

¹⁸ “Kansas Death-Row Prisoners File Suit Challenging Conditions of Confinement.”

¹⁹ Pontier, Merel. (2020). “Cruel But Not Unusual The Automatic Use of Indefinite Solitary Confinement on Death Row: A Comparison of Housing Policies of Death-Sentenced Prisoners and Other Prisoners Throughout the United States.” *Texas Journal on Civil Liberties and Civil Rights*, vol. 26, no. 1.

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2018, five death row inmates in Pennsylvania filed a class-action lawsuit against the state's Department of Corrections.²⁰ The inmates lived in their cells for 22 hours a day during the week and 24 hours a day during weekends.²¹ Just like the Kansas inmates, the death row inmates in Pennsylvania claimed that their confinement caused them physical and psychological harm.²² The Pennsylvania Department of Corrections reached a settlement with the death row inmates, allowing them to have 42.5 hours of out-of-cell activities per week.²³ They are allowed to go outside, visit the law library, hold religious services, and they are allowed to go outside two hours per day, seven days a week.²⁴

Kansas Death Row Inmates Have Limited Access to Air Conditioning

States Death Rows that Have Air Conditioning	State Death Rows that Do Not Have Air Conditioning
Arkansas	Alabama
California	Arizona
Idaho	Florida
Nebraska	Georgia
Nevada	Indiana
Ohio	Kansas

²⁰ Pontier, 2020.

²¹ Pontier, 2020.

²² Pontier, 2020.

²³ Pontier, 2020.

²⁴ Pontier, 2020.

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Oklahoma	Kentucky
Pennsylvania	Louisiana
South Dakota	Mississippi
Tennessee	Missouri
Wyoming	Montana
Federal	North Carolina
	Oregon
	South Carolina
	Texas
	Utah
	Virginia

Appendix: <https://docs.google.com/spreadsheets/d/1WJvubgAMRpedbqzGmoWY-QTbqyZRTtGLOcj5SHzlmfg/edit?usp=sharing>

16 out of 28 capital punishment practicing states do not have air-conditioning in their prison facilities. Despite this normalcy nationwide, the lack of air-conditioning can lead to dangerous consequences. Over long periods of time, exposure to heat can result in heat stroke, heat exhaustion, damage to the heart, brain, and lungs, and even heart attacks.²⁵ Limited air-conditioning can be especially harmful for an aging prison population with pre-existing chronic

²⁵ CDC. "Heat Stress." *CDC: The National Institute for Occupational Safety and Healthy*. <https://www.cdc.gov/niosh/topics/heatstress/default.html#:~:text=Exposure%20to%20extreme%20heat%20can,heat%20cramps%2C%20or%20heat%20rashes.>

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respiratory, cerebral, and cardiovascular illnesses.²⁶ For example, Texas only has air-conditioning in 30 out of its 109 prisons. In 2011, a strong heat wave resulted in the deaths of 10 prisoners, and in 2018, 19 prisoners needed to be hospitalized for heat-related illnesses. Louisiana prisons experienced similar health situations in 2016, accumulating over \$1 million in legal bills. The total of these bills was over four times higher than actually installing an air-conditioning system.²⁷

Kansas air-conditions 30% of its prisons.²⁸ The El Dorado Correctional Facility, reserved for male inmates and executions, is only partly air-conditioned, while Lansing, the oldest correctional complex in the state, has no air-conditioning whatsoever.²⁹ The average summer temperatures in Kansas can reach over 90 degree Fahrenheit.³⁰ Thus, the Kansas Department of Corrections has tried to alleviate this issue by allowing inmates to purchase electric fans at the commissary.³¹ In February 2020, the state built the new Lansing Correctional Facility, which

²⁶ Jones, A. (18 June, 2019). “Cruel and Unusual Punishment: When States Don’t Provide Air Conditioning in Prison.” *Prison Policy Initiative*.

<https://www.prisonpolicy.org/blog/2019/06/18/air-conditioning/>.

²⁷ Jones. (18 June, 2019).

²⁸ Jones. (18 June, 2019).

²⁹ Kansas Department of Corrections. (28 November, 2018). “General Questions.” *Kansas Department of Corrections*. <https://www.doc.ks.gov/facilities/faq/questions#air%20conditioned>.

³⁰ “Kansas City Temperatures: Averages by Month.” *Current Results*. <https://www.currentresults.com/Weather/Missouri/Places/kansas-city-temperatures-by-month-average.php>.

³¹ Kansas Department of Corrections. (28 November, 2018). “General Questions.”

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promises to provide air conditioning to all inmates.³² However the movement of inmates to this new facility has been delayed due to COVID-19.³³

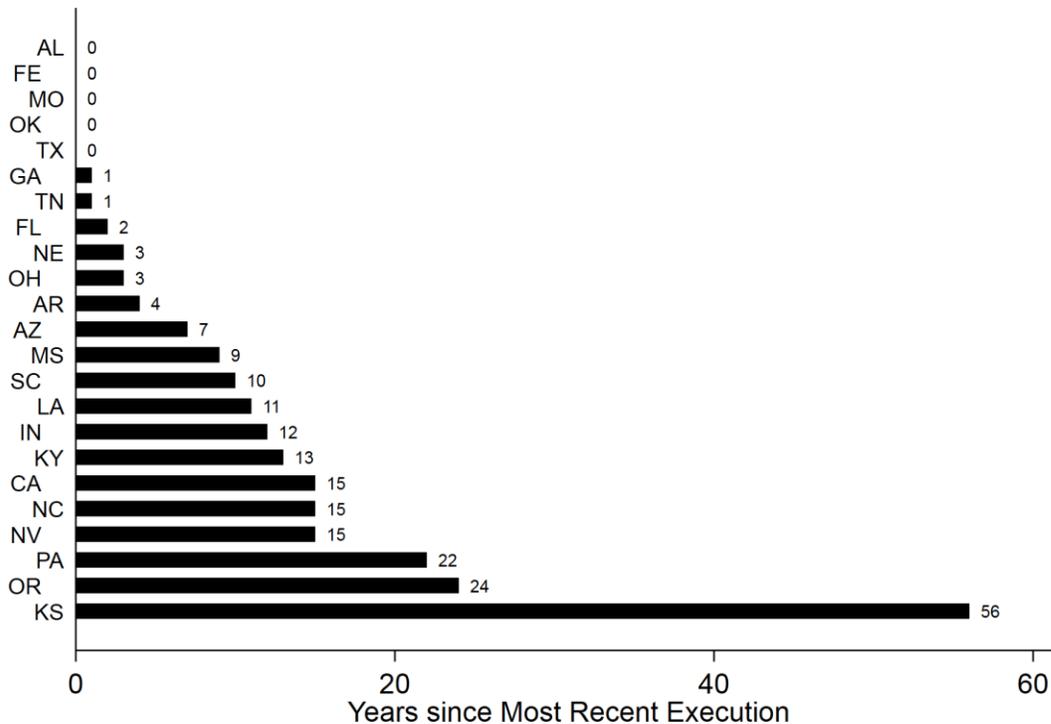
³² Hanna, John. (12 August, 2017). "Kansas To Air Condition Next Prison as Heat Concerns." *The Detroit News*. <https://www.detroitnews.com/story/news/nation/2017/08/12/kansas-prison-air-conditioning/104529036/>.

³³ Richmeier, John. (24 April, 2020) "Inmates Moved to New Buildings." *Leavenworth Times*. <https://www.leavenworthtimes.com/news/20200424/inmates-moved-to-new-buildings>.

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Kansas Has Not Executed Any Inmate Using the Current Death Penalty



Note: Includes only those states with 10 or more individuals sentenced to death.

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After *Furman v. Georgia* ruling the current death penalty legislation unconstitutional in 1972, Kansas did not reinstate until April, 1994.³⁵ Kansas has not executed any inmates under this new system since 1965, and, prior to *Furman v. Georgia*, had only carried out 57 - including military and federal - executions.³⁶ The states with the next longest times since their last

³⁴ Appendix: <https://docs.google.com/spreadsheets/d/1WJvubgAMRpedbqzGmoWY-QTbqyZRTtGI0cj5SHzlmfg/edit?usp=sharing>

³⁵ Death Penalty Information Center. "Kansas." *DPIC*. <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/kansas>.

³⁶ Death Penalty Information Center. "Kansas."

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executions - of the state's that maintain the death penalty - are Wyoming and Oregon. Wyoming has not executed anyone since 1992, which was also the only execution Wyoming carried out since their death penalty was reinstated.³⁷ Oregon's last execution was in 1978, and was also one of only two carried out since its reinstatement there.³⁸

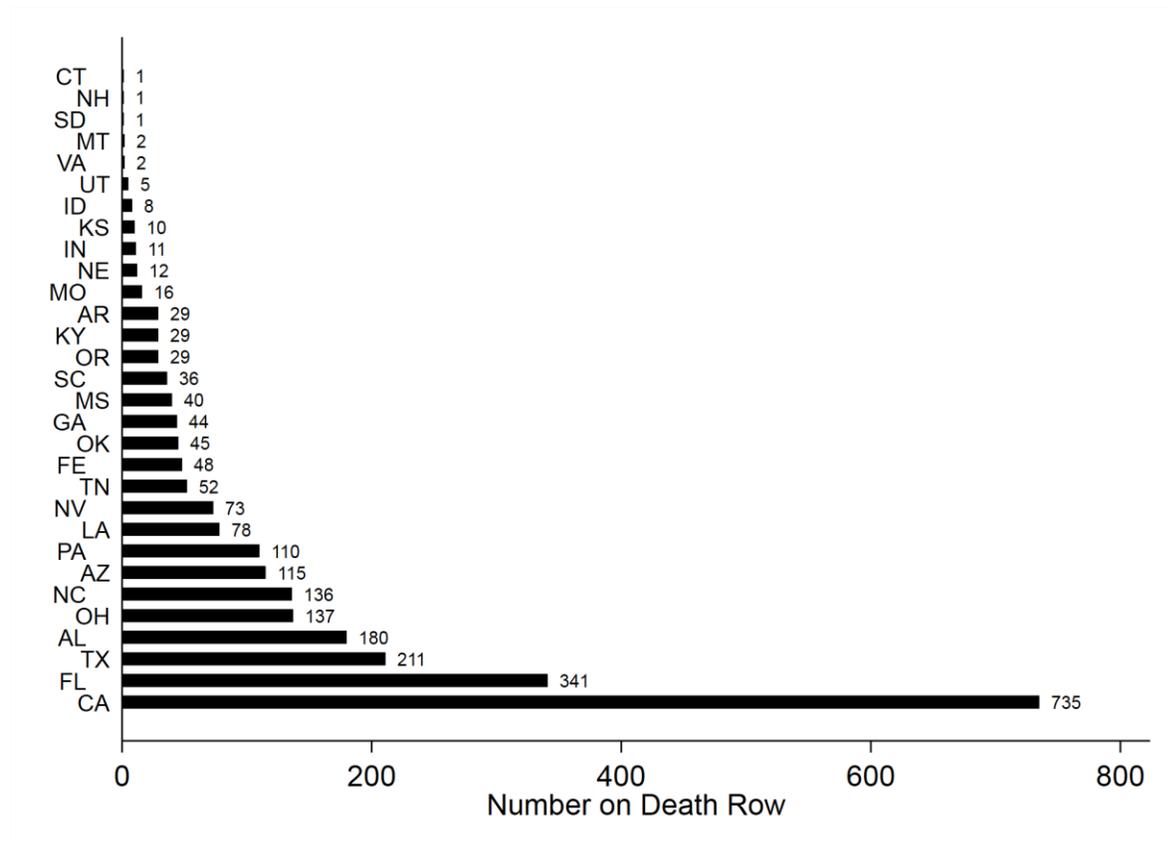
³⁷ Death Penalty Information Center. "Wyoming." *DPIC*. <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/wyoming>.; Russell, Annika. (March 31, 2021). "Wyoming Legislature Votes to Keep Death Penalty and Defund Death Penalty Representation." *American Bar Association*. https://www.americanbar.org/groups/committees/death_penalty_representation/publications/project_blog/wyoming-legislature-votes/.

³⁸ Death Penalty Information Center. "Oregon." *DPIC*. <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/oregon>.

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Kansas Has Relatively Few Individuals Serving on Death Row



There are currently 9 men on Kansas' death row.⁴⁰ Connecticut, New Hampshire, South Dakota, Montana, Virginia, Utah, and Indiana are the only other states that have less than ten people on death row as compared to states like Florida and California which have almost 38 and 82 times the amount of people on death row, respectively. Since Kansas' current death row

³⁹ Appendix: <https://docs.google.com/spreadsheets/d/1WJvubgAMRpedbqzGmoWY-QTbqyZRTtGI0cjSSHZlmfg/edit?usp=sharing>

⁴⁰ Death Penalty Information Center. "Kansas."; Kansas Coalition Against the Death Penalty. "Death Row." *Kansas Coalition Against the Death Penalty*. <https://ksabolition.org/facts/death-row>.

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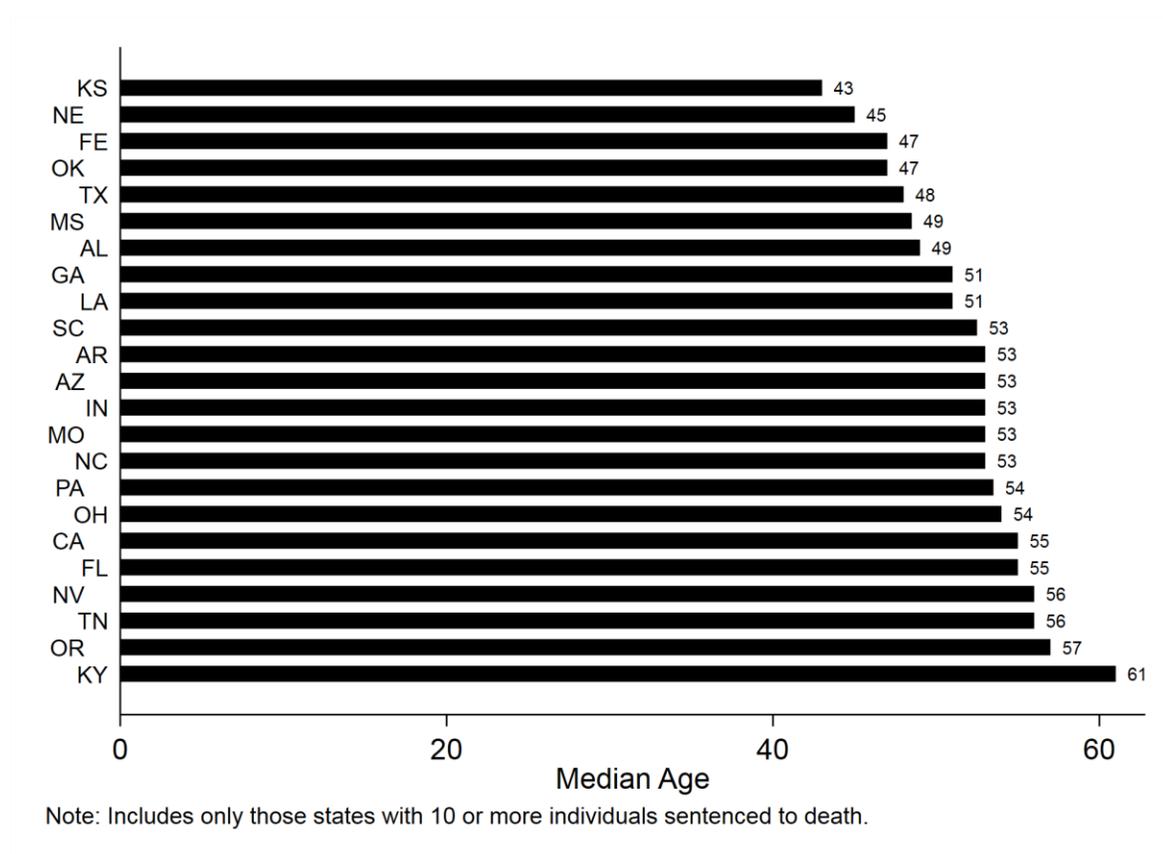
legislation was passed in 1994, capital charges were filed in 85 cases of the one hundred plus potential capital cases. Only thirteen of those men have been sentenced to death. None have been executed; one had the sentencing removed at the request of the District Attorney, two had theirs vacated by the Kansas Supreme Court; and the final died of old age waiting to be executed.⁴¹

⁴¹ Kansas Coalition Against the Death Penalty. "Kansas Facts." *Kansas Coalition Against the Death Penalty*. <https://ksabolition.org/facts/kansas-facts>; Sullivan, Becky. (May 4, 2021). "Man Who Shot And Killed 3 At Kansas Jewish Centers Dies In Prison." *NPR*. <https://www.npr.org/2021/05/04/993604289/man-who-shot-and-killed-3-at-kansas-jewish-centers-dies-in-prison>.

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Kansas Is Not Far Behind In Aging Death Row Population



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Kansas enacted its current death penalty statute only in 1994, whereas other states enacted them as early as five months immediately after the *Furman* decision.⁴³ Therefore, compared to other states, Kansas death row inmates are younger, and have served on death row for shorter time periods. Figure 6 shows that the average median age of those on death row in the

⁴² Appendix: <https://docs.google.com/spreadsheets/d/1WJvubgAMRpedbqzGmoWY-QTbqyZRTtGfOcj5SHzlmfg/edit?usp=sharing>

⁴³ Death Penalty Information Center. "Constitutionality of the Death Penalty in America." *DPIC*. <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/constitutionality-of-the-death-penalty-in-america>.; Death Penalty Information Center. "Florida." *DPIC*. <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/florida>.

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United States is 52 years old. Over 60% of the states that have sentenced more than 10 individuals to death have older death row populations than that average. At 43, the median age of Kansas death row inmates is the lowest in the nation.

However, this favorable average age is a paradox. Kansas' death row had a late start in aging out its population, but has also not executed anyone in 56 years and is not currently looking to change that. The other states' death rows do not represent less favorable conditions, but rather depict Kansas' future. An average two year difference is not even a large gap to close. Additionally, experts have found that solitary confinement, particularly for death row inmates who receive little stimulus or reprieve, accelerates age-related health problems and exacerbates symptoms.⁴⁴ Sedentary, close-quarters life styles tend to age the population rapidly. 50 year-olds are showing signs of chronic illnesses - joint degeneration, etc. - normally seen in 65 year-olds in general populations.⁴⁵ The two-year gap is irrelevant when the health age of the death row is 15 years older than their actual age.

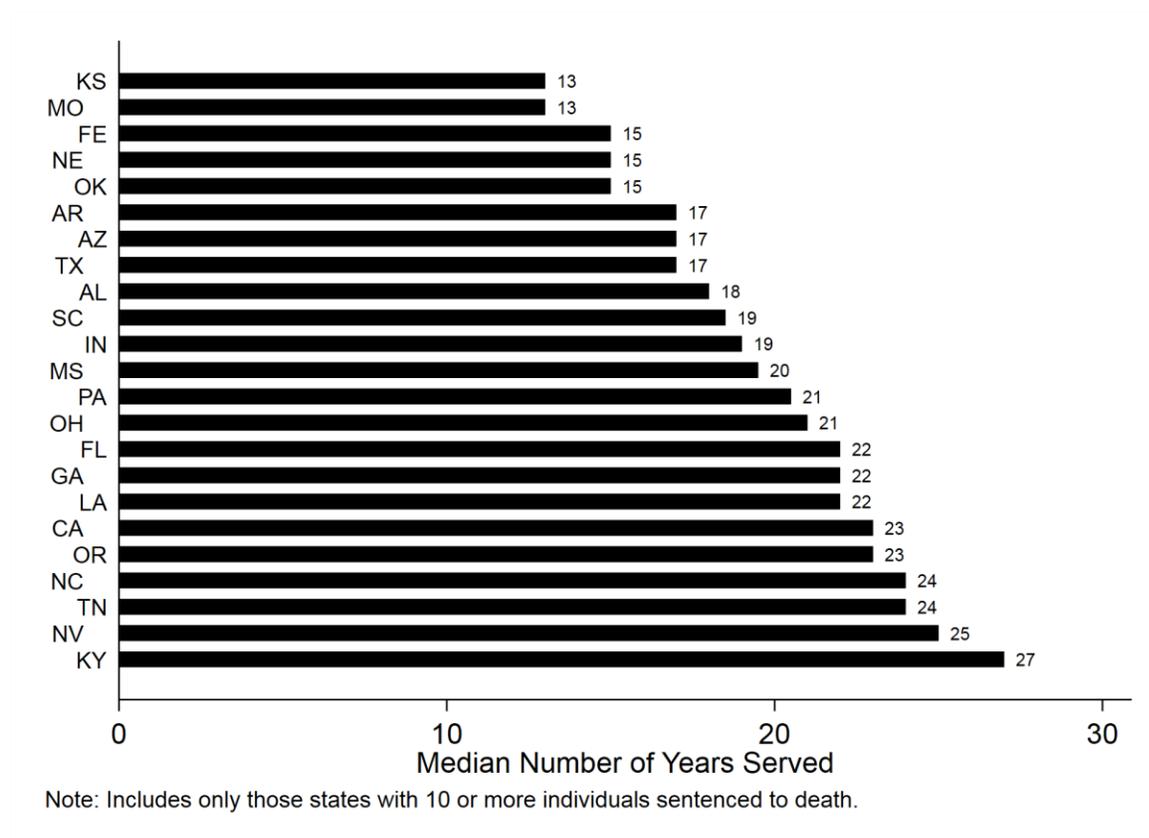
⁴⁴ Associated Press. (January 28, 2012). "Age-related illness catching up with death row." *Deseret News*. <https://www.deseret.com/2012/1/28/20248000/age-related-illness-catching-up-with-death-row#this-wednesday-oct-26-2011-photo-shows-kentucky-state-penitentiary-death-row-inmate-randy-haight-59-at-the-eddyville-ky-state-penitentiary-kentuckys-death-row-is-aging-and-its-costing-the-state-the-35-condemned-inmates-have-an-average-age-of-50-which-is-14-years-older-than-inmates-not-condemned-to-death-while-the-state-doesnt-keep-separate-statistics-for-the-death-row-population-medical-expenses-for-the-department-of-corrections-rose-each-year-since-2008-from-49-1-million-that-year-to-54-8-million-in-fiscal-year-2011.>; Strong, Justin D. (October 9, 2020). "The body in isolation: The physical health impacts of incarceration in solitary confinement." *PLoS One*, vol. 15, no. 10, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7546459/>.

⁴⁵ Associated Press. (January 28, 2012). "Age-related illness catching up with death row." *Deseret News*.

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Kansas Follows the Trend of Long Term Confinement



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In all states with ten or more individuals sentenced to death, inmates have spent an average of 20 years sitting on death row from their date of sentencing to today. Kansas and Missouri both have comparatively the shortest median time served, currently at 13 years, even though it has been 56 years since Kansas has executed anyone, but Missouri carried one out in

⁴⁶ Appendix: <https://docs.google.com/spreadsheets/d/1WJvubgAMRpedbqzGmoWY-QTbqyZRTtGfOcj5SHzlmfg/edit?usp=sharing>

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October 2021.⁴⁷ Over half of the states have 20 or more years as the median time their inmates have spent on death row. Of course, again, since Kansas has not carried out an execution, its relatively young death row population can be expected to age in place for the foreseeable future, mirroring trends in other states.

Research on long term confinement shows that people - even those without a prior history of mental illness - subjected to solitary confinement exhibit a variety of negative physiological and psychological reactions, including: hypersensitivity to external stimuli, visual and auditory hallucinations, increased anxiety and paranoia, lack of impulse control, severe and chronic depression, appetite and weight loss, heart palpitations, apathy, confused thought processes, self-mutilation, and lower levels of brain function - including a decline in EEG activity after only seven days in solitary confinement. In addition to increased psychiatric symptoms generally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement.⁴⁸ According to the ACLU it is not unusual for prisoners in solitary to compulsively cut their flesh, repeatedly smash their heads against walls, swallow razors or other harmful objects, or attempt to hang themselves, and although national data is not readily available for suicide rates of death row

⁴⁷ Hauser, Christine, and Jesus Jiménez. (October 4, 2021). "Missouri Executes Death Row Prisoner Despite Pleas From Pope and Others." *New York Times*. <https://www.nytimes.com/2021/10/04/us/pope-francis-ernest-lee-johnson-execution.html>.

⁴⁸ American Civil Liberties Union. (July 2013). *A Death Before Dying: Solitary Confinement on Death Row*. https://www.aclu.org/sites/default/files/field_document/deathbeforedying-report.pdf; National Commission on Correctional Health Care. (April 19, 2016). "Solitary Confinement (Isolation)." Position Statements, *NCCHC*. <https://www.ncchc.org/solitary-confinement>.

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prisoners in solitary confinement, approximately 50 percent of all prisoner suicides take place in isolation cells.