



# Hindering the Last Competency: The Hazards of Bias and Qualification Inconsistency in Forensic Evaluation of Aging Death Row Inmates for Competency to be Executed

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## Introduction

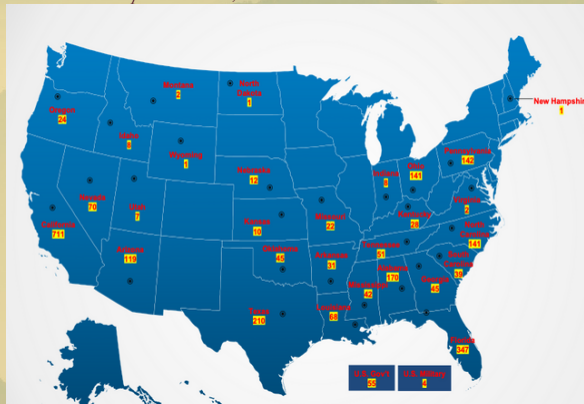
- Of the 2,553 inmates on death row, the average age is 50, with 20% aged 60 and older (NAACP Legal Defense and Educational Fund, Inc., 2020; Snell, 2020).
- Average time passed between capital sentencing and execution is 20 years, contributing to the rise in age-related dementia (Snell, 2020).
- *Madison v. Alabama* (2019) highlighted the growing issue of aging death row inmates. Similar litigation will likely recur given the length of time between sentencing and execution and the rising ages of death row inmates.
- When the call is made for forensic mental health professionals (MHP) to evaluate death row inmates' competency for execution (CFE), or "last competency," factors such as attorney choice of evaluator and the evaluator's implicit biases may have undue influence on the outcomes.
- Attorney choice of MHP to be CFE evaluator only needs to adhere to state standards. Qualification standards for competency evaluations vary state-to-state and almost 30% of states have relaxed their certification qualifications for competency evaluators to include MHPs with degrees lower than the doctoral level (Gowensmith et al., 2015).
- Inadvertent implicit bias, such as adversarial allegiance may unjustly impact evaluator interpretations.

## Evaluator Qualifications

- Within the population of aging death row inmates, inmate cognitive and neuropsychological functioning is especially relevant.
- Advanced specialized training is needed to conduct CFE assessments.
- Clinical forensic neuropsychologists are the most qualified MHPs to administer and interpret the neuropsychological testing needed for this specific population.

Figure 1

Death Row Inmates by State: October 1, 2020



Adapted from "Death Row USA Fall 2020," by NAACP Legal Defense and Educational Fund, Inc., 2020 (<https://www.naacpldf.org/wp-content/uploads/DRUSAFall2020.pdf>). Copyright 2020 by the NAACP Legal Defense and Educational Fund, Inc.

## Evaluator Bias

- Neal (2016) reported that forensic psychologists' pre-existing biases could lead to levels of self-selection concerning their capital evaluations.
- Researchers found that forensic psychologists indicating more willingness to conduct CFEs displayed higher levels of moral disengagement (Neal & Cramer, 2017).
- Perhaps due to the U.S. legal system's adversarial nature, forensic psychologists' attitudes towards capital punishment may influence their allegiance, undermining their ethical obligation to be objective (American Psychological Association, 2011; Neal, 2016).

## Legal & Forensic Implications

- Attorneys should be cognizant of the unique qualifications required to conduct CFEs. Increasing attorney awareness to ensure that forensic neuropsychologists are selected to conduct CFEs should contribute to the validity of CFE assessments and reports.
- For forensic psychologists, increased efforts to reduce bias while examining the unique neuropsychological complications experienced by aging death row inmates may help them conduct more objective and more accurate CFEs.
- Structured checklists such as the Competency for Execution Research Rating Scales (CERRS) may enhance objectivity by encouraging a more uniform, standardized approach to conducting CFEs (Ackerman et al., 2005).

## Future Research

- Future research could explore standardizing CFEs with checklists such as CERRS.
- Addressing the legal system's adversarial nature by examining evaluators who are blinded to what side they are working for may also be a fruitful research area.
- Despite the challenges associated with CFE, evaluating death row inmates for potentially mitigating mental health issues may be the difference between life and death for these vulnerable individuals.

## References

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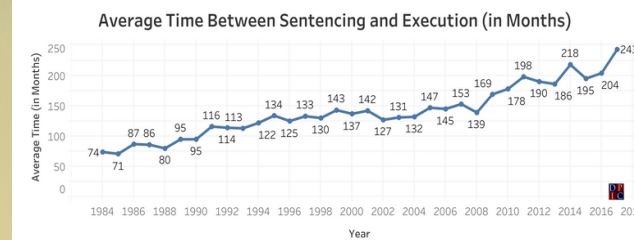
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Figure 2

Average Time Between Sentencing and Execution



From "Time on Death Row," by Death Penalty Information Center, 2019

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