

# New Report: Oregon's Death Penalty Disproportionately Used Against Persons with Significant Mental Impairments

By Fair Punishment Project

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## Introduction

Oregon retains capital punishment mostly as an exorbitantly expensive legal fiction.[1] In practice, as U.S. Supreme Court Justice Anthony Kennedy recently noted, the State falls on the abolitionist “[side of the ledger](#)” because “[Oregon has suspended the death penalty and executed only two individuals in the past 40 years](#).” More revealing still: Over the past 10 years, Oregon juries have imposed [an average of just one death sentence per year](#), which translates into less than 1.25% of homicides, a rate far lower than that which prevailed nationally in 1972 when U.S. Supreme Court Justice Byron White concluded that the infrequent use of the death penalty meant that the punishment had “[cease\[ed\] to be a credible deterrent or measurably to contribute to any other end of punishment in the criminal justice system](#).” By all functional measures, Oregonians have abandoned the death penalty.

And yet, 35 condemned inmates remain on Oregon's death row.[2] What do we know about those people, and about the quality of justice that resulted in their death sentences? This report examines the cases of the condemned men and women in Oregon to see how they ended up there, and what patterns, if any, emerged. We examined legal pleadings and opinions, trial testimony, and media reports, and consulted with several legal experts in Oregon who are familiar with the individuals on death row.

Here's what we found: In Oregon, two-thirds of death row inmates possess signs of serious mental illness or intellectual impairment, endured devastatingly severe childhood trauma, or were not old enough to legally purchase alcohol at the time the offense occurred. The pervasiveness of these crippling impairments among Oregon's death row population is important because though all murders are gruesome and deserving of serious sanction, the Constitution limits the death penalty to the most heinous murders; and even then only when the person who commits the crime is someone who appears to be more culpable than the typically developing adult. So, for example, the U.S. Supreme Court has held that regardless of the severity of the crime, imposition of the death penalty upon a juvenile or an intellectually disabled person, both classes of individuals who suffer from impaired mental and emotional capacity relative to typically developed adults, would be so disproportionate as to violate his or her “inherent dignity as a human being.”

Earlier this year, for example, [a Multnomah County \(Portland\) judge vacated the death sentence](#) of a man with a 61 IQ score, which is in the intellectually disabled range. For context, this score is in the lowest 2% of the population. In post-conviction proceedings, the trial court subsequently examined school records that revealed that he “couldn’t control his behavior,” “stuttered,” and “was labeled as educable mentally retarded” and placed in special education classes. He also “was teased in school,” “suffered a history of abuse and beating around his head as a child,” and appears to have “suffered brain damage during the developmental years” that likely “lower[ed] his capacity to understanding information, communicate, learn from his mistakes and experiences, engage in logical reasoning, control impulses, and understand the reactions of others.” He is now awaiting resentencing.

Another example: In 1988, in Deschutes County, prosecutors secured a death sentence against a boy who was just one month past his eighteenth birthday and who appears to have been high on meth at the time of the crime. According to *The Oregonian*, the teen’s father was “a violent, abusive alcoholic and — in the words of former Deschutes County prosecutor Jon Springer — an absolute monster.”[3] One expert described the father as “sexually perverse toward virtually every female who came into the household,” including his own daughter and another child who lived with the family who he began to openly have sex with in the family house from the time she was 13 years old and in the 8th grade.[4] He also physically abused the children, who developed a ritual of yelling “Bonzai” while sustaining abuse by their father, which allowed the other siblings to come to the room to try to de-escalate the situation. Ultimately, the father would assign his teenaged son to plan a burglary of a woman whom he had met at a flea market, an activity that the family appeared to engage in with regularity. When that burglary failed, the teen and his friends ultimately arrived at the teen’s ex-girlfriend’s house on the same evening, where they robbed and killed two members of her family.

Even if one stipulates that the homicides described above meet the threshold of being among the most aggravated homicides, it is difficult to understand how an abused, brain damaged man with an IQ score in the low 60s is more culpable than the typical intellectually disabled person who could never receive a death sentence, or how an abused, addicted 18-year-old meets the independent moral culpability threshold when a typical 17-year-old is categorically unable to meet that extremely high bar.

### **Age at the Time of the Offense**

In 2005, when the U.S. Supreme Court banned the death penalty for those under the age of 18 at the time of the crime (*Roper v. Simmons*), the Court explained that “[r]etribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.” This is so because youth tend to be less morally culpable because they are more impulsive, less emotionally mature, and more susceptible to external pressures than adults.

Importantly, the *Simmons* Court noted that these “qualities that distinguish juveniles from adults do not disappear when an individual turns 18.” Indeed, there is now consensus in the scientific community that [“the brain isn’t fully mature at 16, when we are allowed to drive, or at 18, when](#)

[we are allowed to vote, or at 21, when we are allowed to drink, but closer to 25, when we are allowed to rent a car.”](#)

In Oregon, six out of 35 prisoners (17%) on death row were under the age of 21 at the time of their crimes (not old enough to purchase alcohol); nine (26%) were under the age of 25 (not old enough to rent a car).

### **Intellectual Impairment and Brain Damage**

In 2002, the U.S. Supreme Court declared that the death penalty is unconstitutional for individuals with intellectual disability (*Atkins v. Virginia*) because of their “diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.” These same deficits also are hallmark attributes of borderline intellectual functioning, traumatic brain injury, and fetal alcohol syndrome.

Our research indicates that approximately one-quarter of individuals on Oregon’s death row may have some form of intellectual disability or brain damage. Nine of the 35 (26%) presented evidence of significantly impaired cognitive functioning as evidenced by low IQ scores, frontal lobe damage, and fetal alcohol syndrome.

### **Severe Mental Illness**

In a [report released earlier this month on Severe Mental Illness and the Death Penalty, the American Bar Association](#) concluded that capital punishment “does not serve any effective or appropriate purpose when it is applied to individuals with severe mental illness.” Like juveniles and people with intellectual disabilities, persons with mental illnesses have conditions that disrupt a person’s thinking, feeling, mood, ability to relate to others, and daily functioning.[5]

Approximately one out of every four individuals on Oregon’s death row exhibits symptoms of mental illness, or has a confirmed diagnosis. Some exhibited signs of psychotic disorders with delusions and hallucinations at the time of the crime, one had been in a state run treatment program for individuals with mental illness, and another had signs of post-traumatic stress disorder. Furthermore, the vast majority of the individuals exhibiting signs of mental illness, also presented evidence of secondary impairments such as intellectual disability, extreme childhood trauma, and youthfulness.

One death row inmate, sentenced to death in 2011, has a psychotic disorder, suffers from partial fetal alcohol syndrome, visible defects in his corpus callosum, a low IQ, and adaptive functioning equivalent to that of a seven-and-a-half-year old child. In December 2015, the Oregon Supreme Court overturned the death sentence and ordered a new hearing to determine whether he is intellectually disabled. Moreover, the man’s co-defendant, who was the mastermind behind the murder, was a childhood friend and exerted pressure on him to participate; his co-defendant corroborated that account. Nonetheless, the co-defendant received a life sentence.

## **The Impact of Trauma**

An April 2015 report titled [\*Understanding the Effects of Maltreatment on Brain Development\*](#), which was released by the three U.S. government agencies that form the Child Welfare Information Gateway, noted, “There is now scientific evidence of altered brain functioning as a result of early abuse and neglect.” Some of these impacts include: a persistent fear response, hyperarousal, diminished executive functioning, delayed developmental milestones, and complicated social interactions. The report went on to state:

“The effects of maltreatment can continue to influence brain development and activity into adolescence and adulthood. These effects may be caused by the cumulative effects of abuse or neglect throughout their lives or by maltreatment newly experienced as an adolescent.”

This nascent research on severe childhood trauma and brain development calls into question whether individuals who have endured extreme trauma can truly be among the most culpable offenders for whom the death penalty is reserved.

Yet, approximately one-third of Oregon’s death row prisoners suffered some form of severe childhood or emotional trauma. One individual was born in prison, another suffered childhood sexual abuse, and several of the individuals were in and out of the foster care system. In many cases, this trauma led to, or was compounded by, other disabilities, such as fetal alcohol syndrome.

## **Conclusion**

The Eighth Amendment’s prohibition on cruel and unusual punishment restricts the use of capital punishment to the least mitigated offenders who commit the most aggravated homicides. Regardless of the severity of the homicide, which this report does not purport to cover, the requirement that the death penalty be limited to those with the most marked moral culpability is surely not being met in Oregon. Our review of Oregon’s death row population shows that a substantial number of the condemned individuals suffer from impairments such as severe mental illness, borderline intellectual functioning, or extreme childhood trauma, or are young adults whose brains have not fully finished developing. Approximately one third of those individuals endure two or more of these conditions. These conditions, like juvenile status and intellectual disability, mean that the inmate’s “culpability or blameworthiness is diminished, to a substantial degree.” Indeed, many of these individuals may be equally—if not more—impaired than those the Court has categorically barred from execution. These findings raise a legitimate question as to whether Oregon’s capital punishment scheme is capable of limiting application of the death penalty to the most culpable offenders.

## **Additional Sources/Footnotes**

1. A recently released study by researchers at Lewis & Clark School of Law and Seattle University revealed that Oregonians have spent [well over \\$140 million \(\\$2.3 million per case, not including prosecution costs, x 61 cases\)](#) in pursuit of death sentences that, if history is any indication, may never be carried out. The results of the study prompted

several editorial boards to question the practicality of the death penalty, and some have even [called on Governor Brown to take a leading role on the issue](#).

2. At least six of these individuals have had their death sentences overturned, however they remain on death row pending resentencing.
3. Steve Duin, “Randy Guzek (Part 1 of 5): Like the Killer Himself, a Horrible Crime Saga Refuses to Go Away,” *The Oregonian*, December 4, 2005, [http://www.oregonlive.com/news/oregonian/steve\\_duin/index.ssf/2005/12/randy\\_guzek\\_part\\_1\\_of\\_5\\_like\\_t.html](http://www.oregonlive.com/news/oregonian/steve_duin/index.ssf/2005/12/randy_guzek_part_1_of_5_like_t.html)
4. *See id.*
5. Nat’l Alliance on Mental Illness, Mental Health Conditions, <https://www.nami.org/Learn-More/Mental-Health-Conditions> (last visited December 20, 2016).

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### **About the Fair Punishment Project**

The Fair Punishment Project uses legal research and educational initiatives to ensure that the U.S. justice system is fair and accountable. As a joint initiative of Harvard Law School’s [Charles Hamilton Houston Institute for Race & Justice](#) and its [Criminal Justice Institute](#), we work to highlight the gross injustices resulting from prosecutorial misconduct, ineffective defense lawyering, and racial bias, and to highlight the unconstitutional use of excessive punishment. The Project also closely partners with [The Bronx Defenders](#), which provides invaluable strategic, research, and writing assistance.