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# *amnesty international*

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## UNITED STATES OF AMERICA

### @Reinstatement of the Death Penalty in New York

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On 7 March 1995, Governor George E. Pataki signed a bill reinstating the death penalty in New York. The bill had previously been passed by both houses of the New York State legislature, the Senate and the Assembly, by votes of 38 to 19 and 94 to 52 respectively. New York is the thirty-eighth state in the USA to have reintroduced legislation allowing for the use of capital punishment. The bill will become law on 1 September 1995.

Governor Pataki made his support for the reintroduction of the death penalty a central issue during the 1994 elections for the governorship. The death penalty bill is the first major piece of legislation to be signed into law by Governor Pataki. There had been eighteen previous attempts by the Senate and Assembly to reintroduce the death penalty since 1977: all previous bills had been vetoed by former Governors Casey and Cuomo.

The law allows for death sentences to be passed for approximately ten offences. These include: intentional murder committed during the course of a rape, robbery or kidnapping; contract killings; the murder of prison warders, police officers or other law enforcement officials; and murder involving torture. The method of execution will be lethal injection: the previous method was electrocution. The last prisoner to be executed in New York was Eddie Lee Mays in 1963.

The law excludes those under 18-years-of-age at the time of the offence, pregnant women and the mentally retarded from execution; the determination of mental retardation will be by the trial-court.

Under the new laws, capital trials will take place over two phases. The first phase determines the guilt or innocence of the defendant. Upon conviction of first degree murder, the court will hold a second hearing known as the "penalty phase". The penalty phase determines whether a sentence of death or life imprisonment without the possibility of parole is to be imposed. The decision on sentencing rests with the original trial-jury. The jury are required to determine whether the mitigating facts of the defendant and the crime

outweigh the aggravating factors. Mitigating factors include: the defendant's lack of prior criminal record; whether the defendant suffered from mental retardation or impaired mental capacity at the time of the crime; that the defendant was under duress or the domination of another person at the time of the offence. Aggravating factors include previous convictions for violent offenses or that the crime is considered an act of "terrorism".

A unanimous decision by the jury is required for either of the sentences available. In the event of the jury being unable to reach a unanimous decision, the defendant will be sentenced to life imprisonment with a minimum term of 20 years.

An act was also passed making a provision of \$11 million, "or so much thereof as may be necessary", to cover the increased prosecution and defence costs involved in administering death penalty laws.

Governor Pataki cited prevention of violent crime as his major justification for reintroducing capital punishment. At the bill-signing ceremony Governor Pataki used two pens which had previously belonged to murdered police officers and was surrounded by the relatives of homicide victims. Governor Pataki was quoted as stating "Justice will now be served...It is a solemn moment because this is something aimed at preventing tragedy, and we've seen too many tragedies in the past."

Detailed research, both in the USA and other countries, has produced no evidence that the death penalty deters crime more effectively than any other punishment. In many non-death penalty countries the homicide rate has decreased after the abolition of capital punishment. For example, in Canada the death penalty was abolished in 1976. From the date of abolition until the end of 1993, the rate of homicides per 100,000 population has dropped by 27 per cent.

In 1993, the last year for which figures are available, there were a total of 2,285 murders in New York. It is estimated that between 15 and 20 per cent could be defined as capital murder under the new death penalty law. However, given the experiences of other states, New York is unlikely to have such a high number of capital trials. Several district attorneys have expressed reservations about seeking death sentences, with at least one stating he would not be prepared to seek a death sentence "under any circumstances".

In reaction to the signing of the death penalty bill, former Governor Mario Cuomo stated: "This is a step back in what should be a march constantly toward a higher level of civility and intelligence. The argument that the death penalty will deter and reduce crimes has been abandoned almost everywhere."

Amnesty International had previously called on New York's state authorities not to reintroduce capital punishment (for further details please see *Possible Reinstatement of the Death Penalty in New York*, AMR 51/09/95).

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**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM**

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