

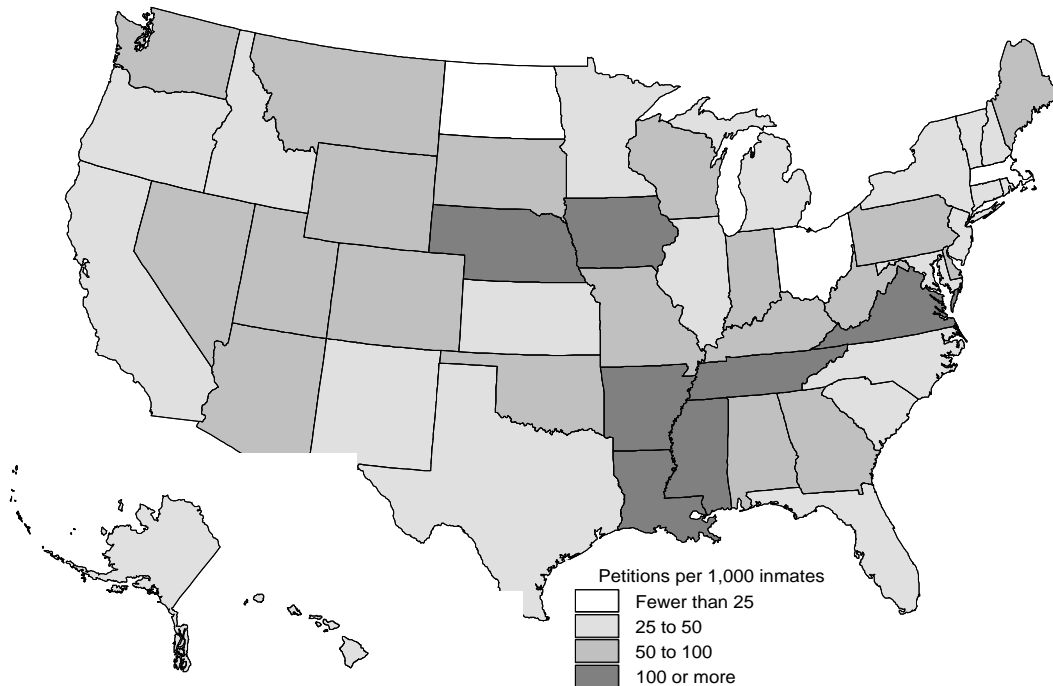


Bureau of Justice Statistics

Federal Justice Statistics Program

Prisoner Petitions in the Federal Courts, 1980-96

Prisoner petitions filed by State prison inmates in U.S. district court, 1995



U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics



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October 1997, NCJ-164615

U.S. Department of Justice
Bureau of Justice Statistics

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Data presented in this report may be obtained from the National Archive of Criminal Justice Data at the University of Michigan, 1-800-999-0960.

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Highlights

- Between 1980 and 1996, the number of petitions filed in U.S. district courts by Federal and State inmates increased from 23,230 to 68,235.
- While the number of petitions filed increased, the rate at which inmates filed petitions decreased 17% from 72.7 petitions per 1,000 inmates to 60.5.
- Fewer than 2% the petitions were adjudicated in favor of the inmate; most (62%) were dismissed.
- 24% of the petitions terminated in U.S. district court were later appealed.
- Between 1980 and 1996, the number of prisoner petitions appealed increased from 3,675 to 17,002.
- 88% of Federal and State inmates represented themselves on appeal.

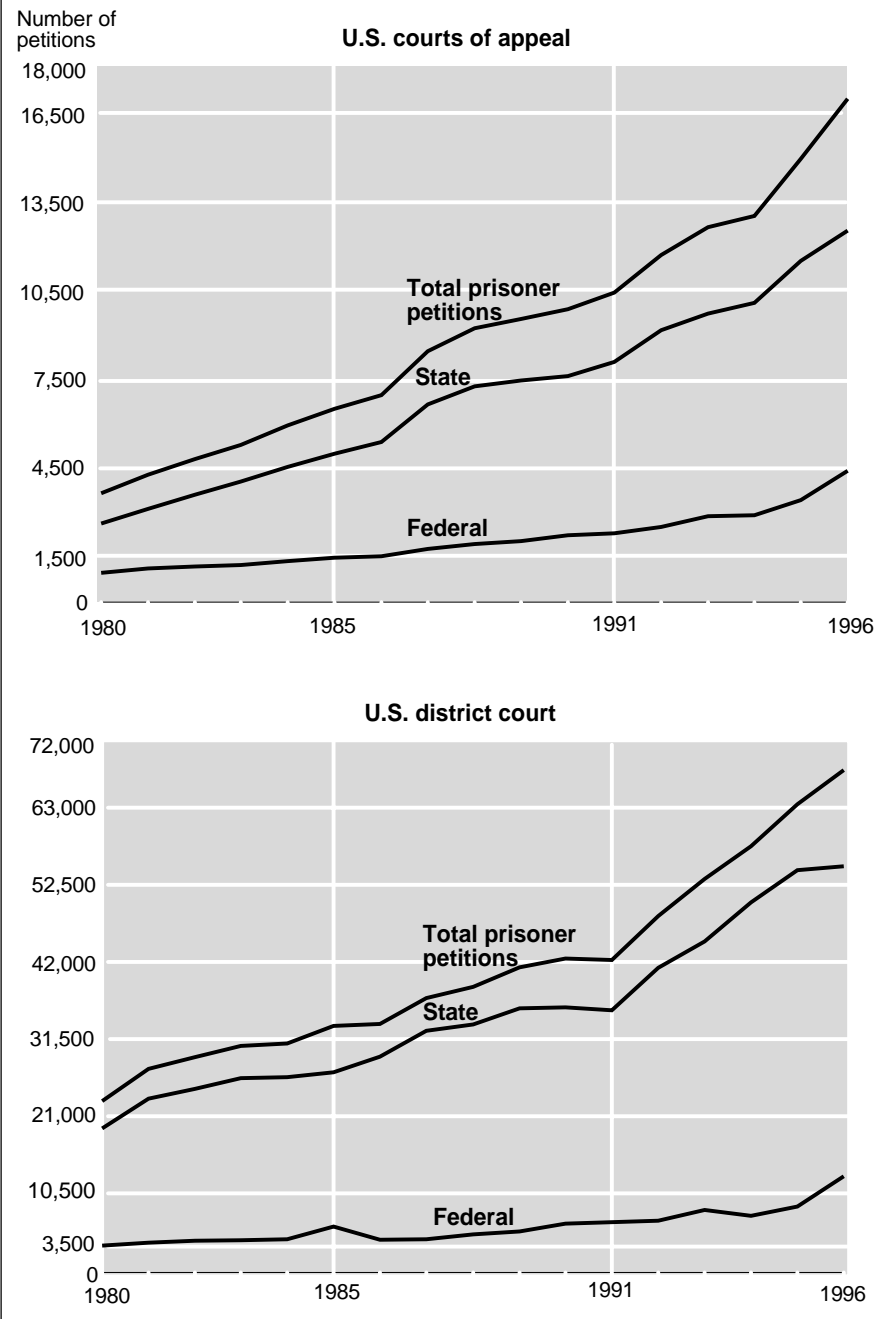
Petitions by State inmates

- State inmates initiated 81% of all prisoner petitions filed during 1996; most (73%) alleged a civil rights violation.
- 21% of State inmates under a sentence of death had a habeas corpus petition active in the Federal courts during 1995.

Petitions by Federal Inmates

- 74% of the petitions filed by Federal inmates challenged the constitutionality of the sentence imposed.
- Between 1987 and 1996, the number of petitions by Federal inmates challenging the sentence imposed increased from 1,664 to 9,729.
- 43% of the petitions by Federal inmates challenging the the sentence were later appealed.

Prisoner petitions filed in Federal courts, 1980-96



Introduction

Overview

Pursuant to Federal law, Federal and State inmates are able to file suits in the Federal courts to: (1) challenge the constitutionality of their imprisonment (habeas corpus); (2) redress deprivations by government officials of any civil rights secured by the Constitution; (3) compel government officials to perform a duty owed to the petitioner (mandamus); and (4), in the case of Federal inmates, to challenge the constitutionality of the sentence imposed (vacate sentence).

The growth in the Federal and State prison population over the last 16 years has been accompanied by an increase in prisoner litigation in the Federal courts — both U.S. district courts (trial) and U.S. courts of appeal (appellate). Between 1980 and 1996 the number of prisoner petitions filed in U.S. district courts by Federal and State inmates increased nearly three-fold from 23,230 during 1980 to 68,235 during 1996. Similarly, the

number of appeals involving prisoner issues has increased fourfold from 3,675 during 1980 to 16,992 during 1996.

While the number of prisoner petitions filed increased between 1980 and 1996, the rate at which both Federal and State inmates filed these petitions declined. During 1980 approximately 72.7 prisoner petitions were filed in U.S. district court for every 1,000 inmates incarcerated in Federal and State prisons. By 1996 the filing rate had decreased approximately 17% to 60.5 petitions for every 1,000 inmates.

An increasing proportion of prisoner petitions terminated in U.S. district court were appealed to the U.S. courts of appeal. Between 1980 and 1996 the rate at which prisoner petitions were appealed increased 48% — from 17.2 appellate filings for every 100 district court terminations during 1980 to 25.4 during 1996.

More than half of the prisoner petitions filed in the Federal courts (both the U.S. district courts and U.S. courts of appeal) alleged civil rights violations. About a quarter of the petitions sought habeas corpus relief. Petitions filed by Federal inmates, however, primarily challenged the constitutionality of the sentence imposed: approximately two-thirds of the petitions filed by Federal inmates were petitions to vacate the sentence imposed.

Tracking prisoner petitions through the Federal courts

Petitions filed by Federal and State inmates in the Federal courts can take several years to process to their conclusion. After the district court disposes of the petition, the petitioner has the option to appeal the district court ruling to the U.S. courts of appeal. Of those prisoner petitions filed in U.S. district court by Federal and State inmates during 1990, almost all (99%) had been disposed of by the district court by the end of 1995

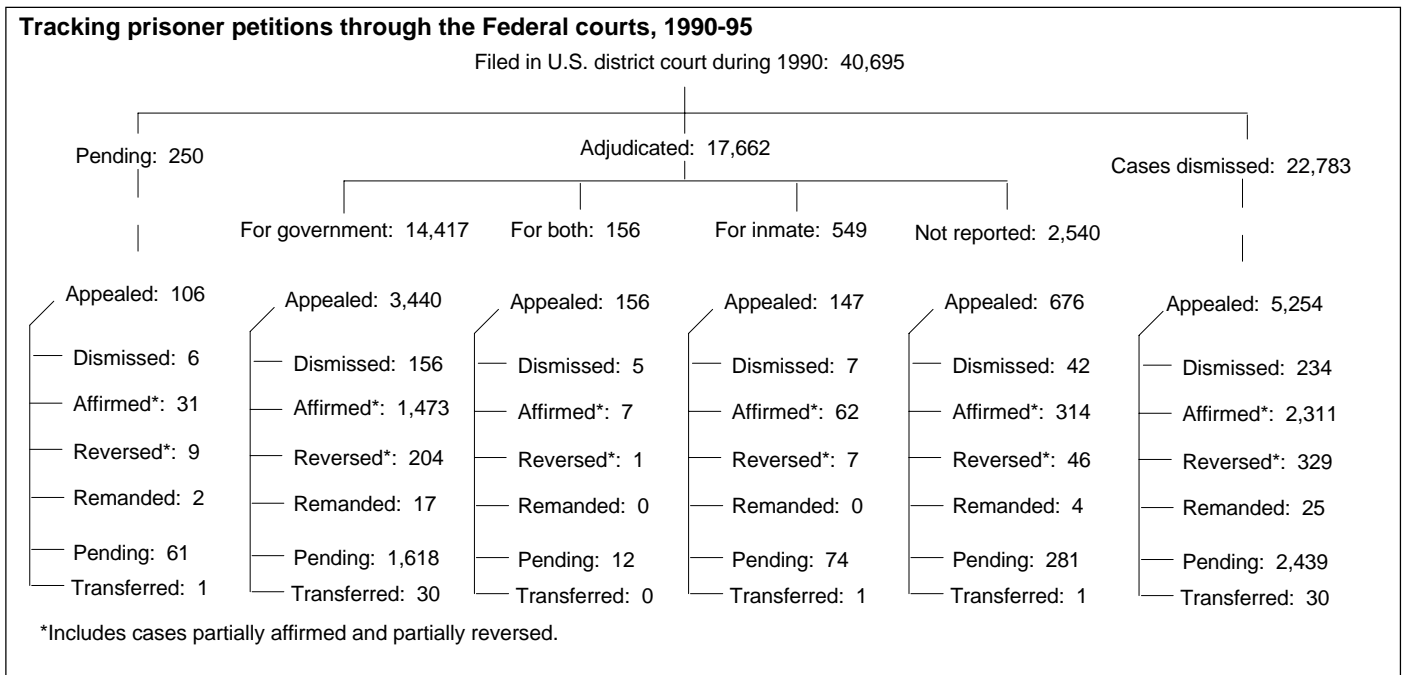


Figure 1

(figure 1). About a quarter (23.7%) of those cases filed in U.S. district courts during 1990 were appealed to the U.S. courts of appeal.

Fewer than 2% of those petitions filed during 1990 were, at least partially, adjudicated in favor of the inmate by the end of 1995. Approximately 11% were still pending with either the district court or the appellate court 5 years after the initial filing.

Petitions dismissed

More than half (56%) of the prisoner petitions filed in U.S. district court during 1990 were dismissed by the district court. About a quarter (23.1%) of those cases dismissed were appealed. By the end of 1995, the appellate courts had disposed of 54% of these cases. Of those cases disposed of by the appellate courts, the district courts rulings were affirmed (at least in part) in 80.7% of the cases and reversed (at least in part) in 11% of the cases.

Petitions adjudicated

Less than half (43%) of the prisoner petitions filed in U.S. district court during 1990 were adjudicated by the district court. Almost all (95%) of those cases adjudicated (where a judgment was reported) were adjudicated exclusively in favor of the government — in an additional 1% of the cases both the government and the inmate partially prevailed.

About a quarter (24%) of those cases adjudicated by the district court were appealed. The government filed an appeal in 26.8% of the cases decided in favor of the inmate whereas inmates appealed 23.9% of the cases decided in favor of the government. The government succeeded in having the district courts' ruling overturned in 10% of the cases.

Petitions pending

Fewer than 1% of those prisoner petitions filed with the district court during 1990 were still pending with the district court at the end of 1995. However, of the 250 cases identified as pending with the district court at the end of 1995, about 42% had been appealed. (A litigant may file interlocutory appeals addressing specific aspects of the case or appeals addressing the timeliness of the district court's handling of the case.) Two-thirds of those cases disposed of by the appellate courts affirmed the district courts' handling of the cases.

Legal representation of Federal and State inmates

While prisoner petitions involve criminal defendants and — particularly in the case of habeas corpus — routinely address criminal law issues, these proceedings are considered civil rather than criminal in nature. Unlike criminal proceedings, parties involved in civil proceedings are not entitled to court-appointed counsel if they are indigent.¹ The Federal courts, however, are provided some discretion in appointing counsel for indigent litigants. Counsel for the indigent is appointed at the discretion of the courts when warranted such as in cases where the facts are undisputed but the issues are too complex for an inmate to handle.²

Previous BJS reports indicated that more than 90% of inmates who file prisoner petitions in U.S. district court file their petitions pro se — representing themselves before the court.³ Similarly, 88% of the inmates involved in an appeal of a prisoner petition represented themselves on appeal

(table 1). (Data describing the petitioners' representation were unavailable for petitions handled in U.S. district courts.) Federal inmates were more likely than State inmates to be represented by legal counsel on appeal. Legal counsel represented approximately 18% of Federal inmates on appeal, compared to fewer than 10% of State inmates.

Inmates who alleged civil rights violations were more likely to represent themselves on appeal than other petitioners. During 1995, 91% of Federal inmates and 94.7% of State inmates who filed civil rights petitions represented themselves on appeal, whereas 76.3% of Federal inmates and 81.6% of State inmates seeking habeas corpus relief represented themselves on appeal.

Table 1. Representation of Federal and State inmates in cases filed in U.S. courts of appeal, 1995

Jurisdiction and type of petition	Number	Pro se	Legal counsel
Total	14,992	88.3%	11.7%
Federal	3,459	81.8%	18.2%
Vacate sentence	2,221	80.2	19.8
Habeas corpus	456	76.3	23.7
Death penalty	0	---	---
Other	456	76.3	23.7
Civil rights	557	91.0	9.0
Other	225	85.3	14.7
State	11,533	90.2%	9.8%
Habeas corpus	3,939	81.6	18.4
Death penalty	129	3.9	96.1
Other	3,810	84.3	15.7
Civil rights	7,529	94.7	5.3
Other	65	92.3	7.7

--- No cases of this type occurred in the data.
Data source: Administrative Office of the U.S. Courts, civil data file (1995).

¹*Pennsylvania v. Finley*, 481 U.S. 551 (1987).

²28 U.S.C. § 1915.

³Roger A. Hanson and Henry W.K. Daley, *Federal Habeas Corpus Review*, BJS Discussion Paper, NCJ-155504, 1995.

Prisoner petitions in U.S. district courts

Prisoner petitions filed

During 1995 Federal and State inmates filed 60,855 prisoner petitions in U.S. district court (table 2). Two-thirds of the petitions filed alleged civil rights violations. Habeas corpus petitions represented approximately 23% of the caseload. The remainder were mandamus petitions (1%) or petitions by Federal inmates challenging a sentence (10%). State inmates filed the majority (86%) of the petitions.

While most of the petitions filed in the Federal courts are filed by State inmates, because the Federal courts have original jurisdiction over matters dealing with Federal inmates, Federal inmates file petitions in Federal court at a greater rate than State inmates. During 1995 Federal inmates filed 96.5 petitions for every 1,000 inmates in Federal custody compared with 52.8 petitions for every 1,000 State inmates. However, compared to State inmates, Federal inmates file few civil rights, habeas corpus, or mandamus petitions. The majority (67%) of the petitions filed by Federal inmates challenged the constitutionality of the sentence imposed.

During 1995 State prison inmates incarcerated in Iowa (148.8 petitions per 1,000 inmates), Arkansas (142.0), and Mississippi (124.6) filed petitions in U.S. district courts at the highest rates (cover map). Compared to those in other regions of the United States, inmates incarcerated in the South filed petitions at the highest rate — 59.8 petitions per 1,000 inmates (not shown in a table). More than three-quarters of the petitions filed by Southern inmates alleged civil rights violations. Inmates incarcerated in Massachusetts (20.4), North Dakota (22.4), and Ohio (24.7), by contrast, filed petitions at the lowest rates.

Table 2. Petitions filed in U.S. district court by Federal and State inmates, 1995

Region and jurisdiction	Total	Type of petition				Civil rights	1995 prison population*
		Vacate sentence	Habeas corpus		Man-damus		
			Death penalty	Other			
U.S. total	60,855	5,814	169	13,966	863	40,043	1,078,545
Federal	8,637	5,814	6	1,260	485	1,072	89,538
State	52,218	--	163	12,706	378	38,971	989,007
Northeast	7,020	--	12	1,696	52	5,260	156,305
Connecticut	450	--	0	75	3	372	14,681
Maine	98	--	**	17	0	81	1,455
Massachusetts	212	--	**	62	9	141	10,369
New Hampshire	81	--	‡	28	1	52	2,002
New Jersey	845	--	0	241	1	603	22,808
New York	2,495	--	0	627	14	1,854	68,489
Pennsylvania	2,697	--	12	597	20	2,068	32,402
Rhode Island	90	--	**	32	4	54	2,854
Vermont	52	--	**	17	0	35	1,245
Midwest	10,362	--	33	2,464	59	7,806	192,757
Illinois	1,587	--	15	279	17	1,276	37,658
Indiana	1,604	--	2	588	10	1,004	16,125
Iowa	879	--	**	87	10	782	5,906
Kansas	351	--	‡	83	3	265	7,055
Michigan	1,581	--	**	368	3	1,210	41,112
Minnesota	159	--	**	46	0	113	4,628
Missouri	1,903	--	11	405	4	1,483	19,151
Nebraska	373	--	0	50	0	323	3,051
North Dakota	15	--	**	4	2	9	670
Ohio	1,097	--	5	358	7	727	44,338
South Dakota	105	--	0	50	0	55	1,864
Wisconsin	708	--	**	146	3	559	11,199
South	25,541	--	92	5,788	182	19,479	427,105
Alabama	1,941	--	6	517	1	1,417	20,549
Arkansas	1,188	--	2	192	6	988	8,364
Delaware	295	--	1	76	1	217	4,799
District of Columbia	272	--	**	19	5	248	9,277
Florida	3,034	--	10	1,100	39	1,885	63,879
Georgia	1,904	--	0	375	21	1,508	34,266
Kentucky	946	--	0	165	6	775	9,928
Louisiana	1,899	--	3	319	28	1,549	16,976
Maryland	928	--	0	202	5	721	21,124
Mississippi	1,261	--	3	180	1	1,077	10,124
North Carolina	848	--	1	82	7	758	27,313
Oklahoma	758	--	7	286	3	462	14,568
South Carolina	850	--	3	183	7	657	18,864
Tennessee	1,326	--	0	234	10	1,082	13,040
Texas	5,263	--	46	1,437	26	3,754	127,766
Virginia	2,605	--	10	364	14	2,217	23,890
West Virginia	223	--	**	57	2	164	2,378
West	9,155	--	26	2,711	81	6,337	212,840
Alaska	78	--	**	28	0	50	2,832
Arizona	1,638	--	3	332	14	1,289	21,341
California	4,172	--	17	1,503	35	2,617	135,133
Colorado	672	--	0	97	2	573	9,508
Hawaii	112	--	**	30	1	81	2,812
Idaho	105	--	0	25	0	80	3,079
Montana	106	--	1	24	0	81	1,601
Nevada	702	--	2	214	3	483	7,599
New Mexico	206	--	0	78	0	128	4,209
Oregon	387	--	2	135	23	227	7,812
Utah	207	--	1	24	1	181	3,985
Washington	685	--	0	195	2	488	11,679
Wyoming	85	--	‡	26	0	59	1,250

Note: Excludes transfers, remands, and statistical closures. Detail does not sum to total; total for State includes petitions filed by inmates in the custody of the outlying territories — Puerto Rico, Virgin Islands, Guam, and the Northern Marianas Islands.

-- No Federal jurisdiction.

*Data source: BJS, Correctional Populations in the United States, 1995, NCJ-163916.

**Jurisdiction without a death penalty during 1995.

‡Jurisdiction had no prisoners under a sentence of death during 1995.

Trends in prisoner petitions filed

Cases filed

Between 1980 and 1996 the number of petitions filed in U.S. district courts by Federal and State inmates increased threefold — from 23,230 during 1980 to 68,235 during 1996 (table 3). Petitions filed by Federal inmates increased at a slightly faster rate (8% average annual rate) than those filed by State inmates (7% average annual increase).

The increase in State prisoner petitions primarily reflects a threefold increase in the number of civil rights petitions filed. Civil rights petitions filed by State inmates increased an average of 8% annually — increasing from 12,395 during 1980 to 39,996 during 1996. Federal civil rights peti-

tions, by contrast, increased 5% annually — from 603 during 1980 to 1,219 during 1996.

Similarly, the number of habeas corpus petitions by State inmates increased at a faster rate than those by Federal inmates. The number of State habeas corpus petitions increased almost 5% annually — from 7,029 during 1980 to 14,726 during 1996 — while the number of Federal petitions remained relatively stable.

While the increase in petitions filed by State inmates reflects an increase in civil rights petitions, the increase in the number of petitions filed by Federal inmates primarily reflects an increase in the number of petitions challenging the sentence imposed.

Prisoner petitions filed by Federal inmates, 1980-96

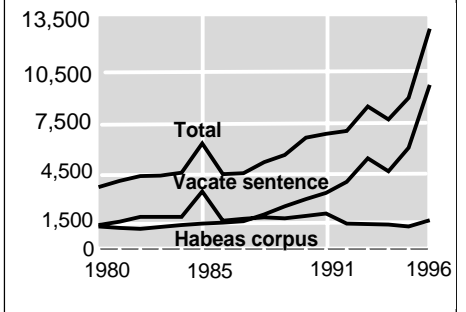


Figure 2

Between 1980 and 1996, petitions by Federal inmates challenging the sentence imposed increased more than sevenfold — from 1,322 during 1980 to 9,729 during 1996 (figure 2).⁴

Most (96%) of the increase in petitions challenging the sentence imposed followed the implementation of major reforms to Federal sentencing policy. The Sentencing Reform Act of 1984, which became effective on November 1, 1987, established the Federal sentencing guidelines, abolished parole, reduced good conduct time, and required increased terms of imprisonment for recidivists. Further, the Sentencing Reform Act, the Anti-Drug Abuse Acts of 1986 and 1988, and the Comprehensive Crime Control Act of 1990, established mandatory minimum terms of imprisonment for defendants trafficking drugs and defendants using a firearm to commit an offense.

⁴The increase in petitions to vacate the sentence imposed between 1995 and 1996 may be the result of the Supreme Court decision in *Bailey v. United States*, ___ U.S. ___, 116 S.Ct. 501, 113 L.Ed. 2d 472(1996). In this case the Supreme Court limited the applicability of 18 U.S.C. § 924(e) to those cases where the defendant actually used the weapon while committing the offense rather than merely possessing it.

Table 3. Prisoner petitions filed in U.S. district court by Federal and State inmates, 1980-96

Year	Jurisdiction and type of petition									
	Total	Federal				State				Total
		Total	Vacate sentence	Habeas corpus	Man-damus	Civil rights	Total	Habeas corpus	Man-damus	
1980	23,230	3,661	1,322	1,413	323	603	19,569	7,029	145	12,395
1981	27,655	4,053	1,248	1,629	342	834	23,602	7,786	177	15,639
1982	29,275	4,328	1,186	1,927	381	834	24,947	8,036	172	16,739
1983	30,765	4,354	1,311	1,914	339	790	26,411	8,523	202	17,686
1984	31,093	4,526	1,427	1,905	372	822	26,567	8,335	198	18,034
1985	33,452	6,262	1,527	3,405	373	957	27,190	8,520	180	18,490
1986	33,758	4,432	1,556	1,679	427	770	29,326	9,040	215	20,071
1987	37,279	4,507	1,664	1,808	313	722	32,772	9,524	276	22,972
1988	38,825	5,130	2,071	1,867	330	862	33,695	9,867	270	23,558
1989	41,472	5,577	2,526	1,818	315	918	35,895	10,545	311	25,039
1990	42,623	6,611	2,970	1,967	525	1,149	36,012	10,817	352	24,843
1991	42,452	6,817	3,328	2,112	378	999	35,635	10,325	267	25,043
1992	48,417	6,997	3,983	1,507	597	910	41,420	11,296	479	29,645
1993	53,436	8,456	5,379	1,467	695	915	44,980	11,574	388	33,018
1994	57,928	7,700	4,628	1,441	491	1,140	50,228	11,908	395	37,925
1995	63,634	8,951	5,988	1,343	510	1,110	54,593	13,627	397	40,569
1996	68,235	13,069	9,729	1,703	444	1,219	55,166	14,726	444	39,996

Note: Includes transfers, remands, and statistical closures.
Data source: Administrative Office of the U.S. Courts, *Report of the Proceedings of the Judicial Conference of the United States*, (table C-2).

Many defendants have challenged these sentencing reforms (and the sentences imposed pursuant to these reforms) on direct appellate review. During 1995, 47,556 defendants were convicted and sentenced in the Federal courts; 21% of these defendants filed a direct appeal challenging some aspect of the sentence imposed.

Most (84%) of these appellants, however, were unsuccessful. Having unsuccessfully challenged the sentence imposed on direct appeal, many Federal inmates have turned to civil remedies in another attempt to have the sentence vacated or otherwise reduced.

Filing rate

While the number of prisoner petitions filed in U.S. district courts substantially increased between 1980 and 1996, the Nation's prison population was also substantially increasing. Between 1980 and 1996, the number of persons incarcerated in the Nation's

prisons (both Federal and State facilities) increased an average of 8.2% annually — from 319,598 inmates incarcerated during 1980 to 1.13 million during 1996 (table 4). The Federal prison population increased at a slightly faster rate (9% annually) than the State prison population (8% annually).

The increase in the prison population has been accompanied by a similar increase in the number of prisoner petitions filed in Federal court. However, accounting for the increase in the prison population, the rate at which inmates filed petitions declined by approximately 17% between 1980 and 1996. During 1980, 72.7 petitions were filed for every 1,000 inmates incarcerated in both Federal and State prisons. By 1996 the filing rate had decreased to 60.5 petitions (figure 3).

The filing rate for Federal inmates varied substantially between 1980 and 1996. After an overall increase

between 1980 and 1985, the rate at which Federal inmates filed prisoner petitions decreased by 43% between 1985 and 1995. This decline was largely attributable to substantial decreases in the rates in which Federal inmates filed habeas corpus, civil rights, and mandamus petitions. The rate at which Federal inmates filed habeas corpus petitions declined by 84%; civil rights by 53%; and mandamus by 46%.

However, between 1995 and 1996, the filing rate increased by 37%. This increase was primarily attributable to a substantial increase in the rate at which Federal inmates filed petitions to vacate the sentence imposed.

Beginning in 1988 (after the implementation of Federal sentencing reforms) petitions by Federal inmates to vacate the sentence imposed began to increase. While Federal inmates were filing habeas corpus, civil rights, and mandamus petitions at lower rates, they filed petitions to vacate the sentence at higher rates. Between

Table 4. Number of persons held in Federal and State prisons, 1980-96

Year	Total	Federal	State
1980	319,598	23,779	295,819
1981	360,029	26,778	333,251
1982	402,914	27,311	375,603
1983	423,898	28,945	394,953
1984	448,264	30,875	417,389
1985	487,593	35,781	451,812
1986	526,436	39,781	486,655
1987	562,814	42,478	520,336
1988	606,810	44,205	562,605
1989	683,382	53,387	629,995
1990	743,382	58,838	684,544
1991	792,535	63,930	728,605
1992	850,566	72,071	778,495
1993	909,381	80,815	828,566
1994	990,147	85,500	904,647
1995	1,078,545	89,538	989,007
1996*	1,128,274	95,088	1,033,186

Note: Data represent the population as of December 31;
 *Preliminary numbers.
 Source: BJS, *Correctional Populations in the United States*, annual.

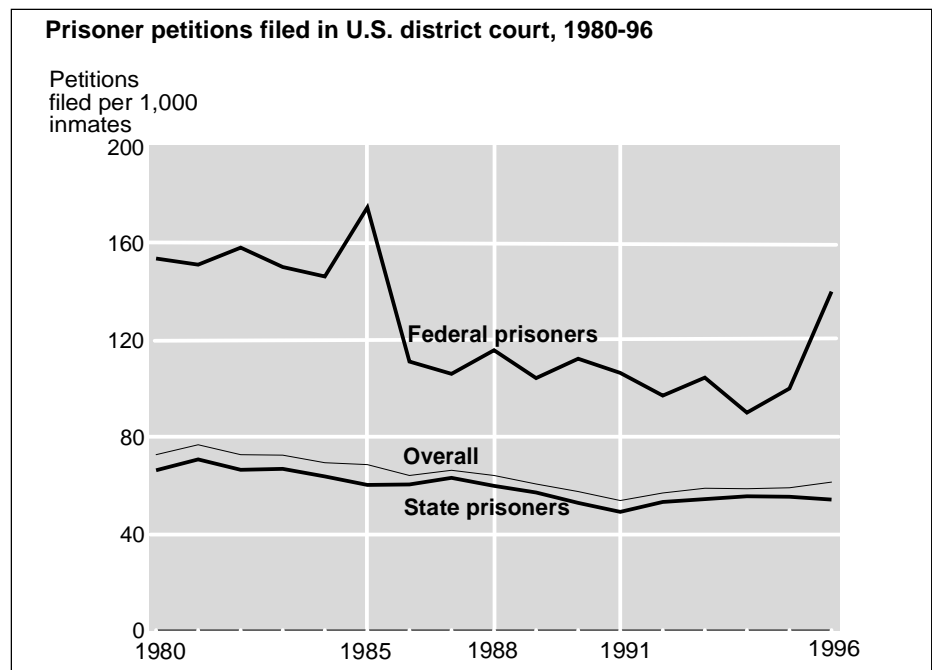


Figure 3

1987 and 1996, the rate at which Federal inmates filed petitions challenging the sentence imposed increased by 161% — from 39.2 petitions per 1,000 inmates during 1987 to 102.3 during 1996.

Compared to the filing rate for Federal inmates, the filing rate for State inmates was relatively constant. Nonetheless, the filing rate for State inmates declined 19% between 1980 and 1996 — from 66.2 petitions per 1,000 inmates during 1980 to 53.4 petitions during 1996. Three-quarters of the decrease in State petitions was attributable to a decline in the rate at which State inmates filed habeas corpus petitions. The filing rate of State habeas corpus petitions declined 40% — from 23.8 petitions per 1,000 inmates during 1980 to 14.3 petitions during 1995. The filing rate for State

civil rights petitions declined by 25% — from 41.9 during 1980 to 38.7 during 1995.

Prisoner petitions adjudicated in U.S. district court

Mode of disposition

During 1995 U.S. district courts disposed of 57,982 prisoner petitions. More than half of these petitions were dismissed (table 5). Of those cases terminated during 1995 —

- 64% of those petitions filed by Federal inmates and 62% of those filed by State inmates were dismissed;
- 66% of those petitions by Federal inmates challenging the sentence imposed were dismissed; and
- Mandamus petitions were dismissed at the highest rate: 72% of those peti-

tions filed by Federal inmates and 71% of those by State inmates.

Overall, few (1.8%) prisoner petitions were adjudicated at trial. Civil rights petitions, however, were the most likely to be adjudicated by trial: almost 2.6% of civil rights petitions filed by State inmates and 1% of those filed by Federal inmates.

Thirty-six percent of the cases were disposed of by means such as consent decrees, judgments on pretrial motions, or arbitrated judgments. Of these cases, most (80%) were disposed of following a pretrial motion (not shown in a table).

Disposition

Of the 57,982 prisoner petitions terminated in U.S. district court during 1995, 1.2% were adjudicated in favor of the plaintiff — the inmate (table 6).

Table 5. Mode of disposition for prisoner petitions terminated in U.S. district court, 1995

Jurisdiction and type of petition	Number*	Percent of cases		
		Dismissed	Judgment	
			Trial	Other
Total	57,968	62.1%	1.8%	36.1%
Federal	7,797	64.3%	.3%	35.4%
Vacate sentence	4,876	66.1	.2	33.7
Habeas corpus	1,252	61.2	.2	38.7
Death penalty	5	---	---	---
Other	1,247	61.1	.2	38.7
Mandamus	539	72.4	0	27.6
Civil rights	1,130	56.0	1.0	43.0
State	50,159	61.8%	2.0%	36.2%
Habeas corpus	11,838	58.7	.2	41.1
Death penalty	129	66.7	.8	32.6
Other	11,709	58.6	.2	41.2
Mandamus	378	70.9	.8	28.3
Civil rights	37,943	62.7	2.6	34.7

Note: Excludes transfers, remands, and statistical closures. Trial includes cases for which a trial was scheduled but not necessarily completed before dispositions. In some cases, the parties might have settled before the completion of the trial.

---Too few cases to obtain statistically reliable data.
Data source: Administrative Office of the U.S. Courts, civil data file (1995).

*Includes 12 cases for which jurisdiction could not be determined but excludes 14 cases for which mode of disposition could not be determined.

Table 6. Disposition of prisoner petitions terminated in U.S. district court, 1995

Jurisdiction and type of petition	Number*	Percent of petitions disposed			
		Dismissed	Judgment		
	Inmate		Government	Both	
Total	57,982	62.1%	1.2%	36.3%	.4%
Federal	7,804	64.2%	3.8%	31.9%	.2%
Vacate sentence	4,883	66.0	5.1	28.7	.2
Habeas corpus	1,252	61.2	2.0	36.3	.5
Death penalty	5	---	---	---	---
Other	1,247	61.1	1.9	36.5	.5
Mandamus	539	72.4	2.0	25.6	0
Civil rights	1,130	55.8	.6	43.5	0
State	50,166	61.8%	.7%	37.0%	.5%
Habeas corpus	11,841	58.6	1.2	39.6	.5
Death penalty	129	66.7	2.3	29.5	1.6
Other	11,712	58.6	1.2	39.7	.5
Mandamus	378	70.9	1.9	27.2	0
Civil rights	37,947	62.6	.6	36.3	.4

Note: Excludes transfers, remands, and statistical closures.
---Too few cases to obtain statistically reliable data.

Data source: Administrative Office of the U.S. Courts, civil data file (1995).

*Includes 12 cases for which jurisdiction could not be determined.

Additionally, in 0.4% of the cases both the inmate and the government partially prevailed.

Compared to State inmates, a slightly higher proportion of Federal inmates were successful with their suits. Of

the 7,804 petitions filed by Federal inmates that were terminated during 1995, 4% were adjudicated at least partially in favor of the inmate.

Approximately 5% of the petitions to vacate the sentence imposed were

adjudicated in favor of the inmate; 2% of habeas corpus petitions (including the only death penalty petition), 2% of the mandamus petitions, and 0.6% of the civil rights petitions were adjudicated in favor of the defendant, at least in part.

In contrast to the outcome of petitions filed by Federal inmates, of the 50,166 petitions by State inmates terminated during 1995, about 1% were adjudicated at least partially in favor of the inmate. Habeas corpus petitions by death row inmates were the most successful — 3.9% of these petitions were adjudicated at least partially in favor of the inmate — and, similar to the outcome of petitions by Federal inmates, civil rights petitions were the least successful — 1% were adjudicated at least partially in favor of the inmate.

While the success rate of prisoner petitions is low overall, in those cases adjudicated by the courts — not dismissed — inmates were slightly more successful. Of those cases for which there was a judgment, 3% were adjudicated in favor of the inmate — including 15% of petitions by Federal inmates challenging the sentence imposed. Additionally, in 1% of the cases both the inmate and the government partially prevailed.

Case processing time

Prisoner petitions terminated during 1995 were processed in approximately 9 months (274 days), on average (table 7). Half of the cases, however, took less than 5 months (161 days). Habeas corpus petitions generally took longer (285 days) than other types of petitions (not shown in a table).

Table 7. Case processing time for prisoner petitions terminated in U.S. district court, 1995

Jurisdiction and type of petition	Number*	Days between filing and termination					Average
		Percentile of terminations					
		10th	25th	50th	75th	90th	
Total	57,982	8	49	161	364	681	273.9
Federal	7,804	12	53	141	297	544	228.9
Vacate sentence	4,883	14	56	137	284	521	220.6
Habeas corpus	1,252	11	48	129	271	492	207.8
Death penalty	5	---	---	---	---	---	---
Other	1,247	12	48	129	270	483	205.4
Mandamus	539	22	62	191	442	784	300.1
Civil rights	1,130	0	38	165	346	561	253.8
State	50,166	8	49	166	376	702	280.9
Habeas corpus	11,841	19	71	182	386	745	297.4
Death penalty	129	1	13	349	973	1,756	659.2
Other	11,712	20	72	181	384	735	293.4
Mandamus	378	4	22	72	206	396	160.2
Civil rights	37,947	6	44	161	375	689	276.9

Note: Excludes transfers, remands, and statistical closures.

*Includes 12 cases for which jurisdiction could not be determined.

---Too few cases to obtain a reliable estimate.

Data source: Administrative Office of the U.S. Courts, civil data file (1995).

Table 8. Case processing time for prisoner petitions terminated in U.S. district court, 1995

Jurisdiction and mode of petition	Number*	Days between filing and termination					Average
		Percentile of terminations					
		10th	25th	50th	75th	90th	
Total	57,982	8	49	161	364	681	273.9
Federal	7,804	12	53	141	297	544	228.9
Dismissal	5,010	8	46	128	281	525	215.4
Trial	23	97	197	311	517	1,257	311.0
Other	2,764	21	68	162	321	581	251.5
State	50,166	8	49	166	376	702	280.9
Dismissal	30,997	6	40	130	315	625	243.9
Trial	1,011	198	339	590	1,026	1,405	590.0
Other	18,151	13	79	223	433	738	318.9

Note: Excludes transfers, remands, and statistical closures.

*Includes 12 cases for which jurisdiction could not be determined.

Data source: Administrative Office of the U.S. Courts, civil data file (1995).

Petitions filed by State inmates took nearly 2 months longer, on average, than those filed by Federal inmates — 281 days for State petitions compared to 229 days for Federal petitions. The longer case processing time for State petitions reflects, in part, differences in the mode of disposition between Federal and State petitions. The case processing time reported for State inmates, however, does not include the time spent in the State courts or in administrative proceedings. If this time were available and taken into account, the entire process for State inmates would take considerably longer than for Federal inmates.

Case processing time varied substantially by mode of disposition (table 8). On average, prisoner petitions disposed of at trial took longer — approximately 2 years (727 days) — to process than petitions that were dismissed — 240 days (on average) — or those petitions disposed of by other means — 310 days on average (not shown in a table).

However, even after accounting for differences in mode of disposition, petitions by the State inmates took longer to process than petitions by Federal inmates:

- State petitions adjudicated at trial took 590 days to process compared to 311 days for Federal petitions;
- State petitions that were dismissed took 244 days to process compared to 215 days for Federal petitions; and
- State petitions disposed of by other means took 319 days to process compared to 252 days for Federal petitions.

Previous BJS reports indicated that case processing time varies according to the complexity of the case and whether the inmate was represented by counsel. Cases involving more complex legal issues or multiple issues generally take more time to process, on average, than cases involving less complex issues. For example, civil rights petitions involving a single issue took 268 days, on average, to process whereas petitions involving 2 issues took 312 days and those involving 3 or more issues took 433 days (not shown in a table).⁵ Similar patterns were observed for habeas corpus petitions.⁶

Similarly, cases where inmates were represented by counsel took longer (825 days, on average) than those where the inmates represented themselves (551 days).⁷

⁵Roger A. Hanson and Henry Daley, *Challenging the Conditions of Prisons and Jails*, BJS Discussion Paper, NCJ-151652, 1995.

⁶Roger A. Hanson and Henry Daley, *Federal Habeas Corpus Review*, BJS Discussion Paper, NCJ-155504, 1995.

⁷*Challenging the Conditions of Prisons and Jails*, 1995.

Habeas corpus petitions by death row inmates in State prisons

During 1995, 648 (or 21%) of inmates under a sentence of death had a habeas corpus petition active — filed, terminated, or otherwise pending — in the Federal courts — U.S. district courts or U.S. courts of appeal (table). Death row petitions represented about 2% of all active habeas corpus petitions in the Federal courts during 1995 (not shown in a table). Inmates under a sentence of death had 212.7 habeas corpus petitions active in the Federal courts during 1995 for every 1,000 inmates on death row (not shown in a table).

Most (65%) of these petitions were filed by inmates in those States with the greatest number of inmates under a sentence of death or executed during 1995. Virginia had the greatest proportion (66%) of death row inmates with an active habeas corpus petition (table). During 1995 Virginia executed 5 of the 56 people on its death row.

State	Habeas corpus petitions pending in Federal courts ^b	Capital punishment statistics ^a		
		Inmates under a sentence of death Number ^c	Average time-served on death row (in years)	Inmates executed during 1995 ^d
Total	648	3,046	6.5	56
Texas	141	404	6.5	19
California	84	420	7.0	0
Illinois	35	154	7.1	5
Pennsylvania	21	196	6.1	2
Missouri	56	92	6.1	6
Florida	47	362	6.9	3
Virginia	37	56	4.5	5
Other ^c	227	1,362	5.1	16

^aIncludes all inmates under a sentence of death regardless of whether they had a habeas corpus petition active in the Federal courts during 1995.

^bIncludes all inmates who filed, or whose cases were terminated or still pending, in U.S. district courts or U.S. courts of appeal during 1995.

^cCapital Punishment 1995, BJS Bulletin, NCJ-162043, 1996.

^dSee, table 1 for details.

Mode of adjudication

Of the 129 death-row petitions concluded during 1995, fewer than 1% were adjudicated at trial (table 5). Two-thirds of these petitions were dismissed; and about a third were disposed of by means other than litigation. Of those petitions that were not dismissed, about 12% were adjudicated at least partially in favor of the inmate — 7% fully and 5% partially.

Case processing time

Petitions by death row inmates took almost 2 years (659 days), on average, to process (table 7). Ten percent of these petitions, however, took at least 4 years and 10 months to process. (Does not include case processing time which may have previously occurred at State court level.)

Appeals

During 1995, 129 habeas corpus petitions involving State inmates under a sentence of death were filed with the U.S. courts of appeal (not shown in a table). Unlike other prisoner petitions, in nearly all (96%) of these cases, legal counsel represented the inmate (table 1). Almost two-thirds of those cases concluded were held over for oral hearings — a greater fraction than of all other types of petitions (table 10). However, while the appellate courts dismissed 14% of the habeas cases, of those cases for which there was a judgment during 1995 the district courts' rulings were upheld in about 59% (table 11). Most (82.9%) of the dismissed cases were terminated on procedural bases (not shown in a table).

On average, death row petitions take longer to process by the U.S. courts of appeal than other prisoner petitions. During 1995 habeas corpus petitions by State inmates under a sentence of death took nearly a year (341 days), on average, to process; 10% of the cases however, took about 2½ years to process. The longer case processing time for these cases reflected, in part, the larger proportion held over for oral arguments (not shown in a table).

Prisoner petitions in U.S. courts of appeal

In the Federal system, parties involved in cases handled in U.S. district courts have the right to have a district court decision reviewed by the U.S. courts of appeal. If the appellate court finds that the district court mishandled the case and that the error deprived the party of a fair trial, the appellate court will issue an "order of reversal" and/or a "remand." A "reversal" annuls the district court's judgment in its entirety. A "remand," by contrast, requires that the district court review its decision considering the appellate court's ruling(s) and/or collect additional evidence to more appropriately adjudicate the case. If the appellate court, however, finds that the district court handled the case appropriately, it will "affirm" the district court's decision.

Prisoner petitions filed

During 1996, 16,992 cases involving Federal and State prisoner petitions were appealed to the U.S. courts of

appeal (table 9). More than half of the cases filed on appeal *originally* alleged civil rights violations. (Information describing the specific issue raised in the appeal is unavailable.) More than a quarter (28.7%) originally sought habeas corpus relief; 18.1% originally challenged the constitutionality of a Federal sentence; and, the remainder (2%) involved other issues such as mandamus. State prison inmates made three-fourths of the appeals.

The issue underlying the appeal varied by whether the inmate was in Federal or State custody. Similar to cases filed in U.S. district courts, the majority (64.2%) of appeals that involved State inmates originally alleged civil rights violations. Additionally, about a third originally sought habeas corpus relief. Two-thirds of appeals involving Federal inmates, by contrast, originally challenged the sentence imposed.

Approximately 24% of those prisoner petitions that were terminated in U.S. district courts were appealed to the U.S. courts of appeal (not shown in a table). Petitions involving Federal inmates were appealed at nearly twice the rate of those involving State inmates — 37.1 appeals per 100 district court terminations by Federal inmates compared to 22.5 by State inmates. Decisions involving civil rights petitions and petitions challenging the sentence imposed were appealed at the highest rates — 46.5 and 42.9 petitions per 100 district court terminations, respectively.

Generally, those States where inmates filed petitions in U.S. district court at the highest rates had the highest appeals rates. During 1995 petitions by inmates incarcerated in Kansas (29.6 appeals per 1,000 district court terminations), Virginia (25.3), and Iowa (25.1) were appealed at the highest rates (figure 4). Civil rights petitions were appealed at the highest rates in Virginia (18.7) and Iowa (21.2). Kansas, however, had the highest appeal rate of habeas corpus petitions: 19.6 appeals per 1,000 district court terminations. By contrast, prisoner petitions by inmates incarcerated in Connecticut (3.4), Massachusetts (4.0) and Hawaii (4.8) were appealed at the lowest rates.

Trends, 1980-1995

Appeals filed

Similar to the increase in prisoner petitions filed in U.S. district courts, between 1980 and 1995, the number of prisoner petitions appealed to the U.S. courts of appeal increased more than fourfold — from 3,675 during 1980 to 16,992 during 1996 (table 9).

Table 9. Prisoner petitions filed in U.S. circuit courts of appeal by Federal and State inmates, 1980-96

Year	Number of petitions appealed									
	Total	Federal					State			
		Total	Vacate sentence	Habeas corpus	Civil rights	Other	Total	Habeas corpus	Civil rights	Other
1980	3,675	1,007	450	302	159	96	2,668	1,020	1,578	70
1981	4,311	1,155	459	344	234	118	3,156	1,258	1,851	47
1982	4,833	1,203	359	455	234	155	3,630	1,529	2,038	63
1983	5,327	1,258	388	440	282	148	4,069	1,683	2,297	89
1984	5,964	1,397	470	462	294	171	4,567	1,609	2,796	162
1985	6,532	1,510	551	531	288	140	5,022	2,172	2,772	78
1986	6,992	1,569	624	485	324	136	5,423	2,331	2,982	110
1987	8,485	1,802	712	546	349	195	6,683	2,755	3,817	111
1988	9,253	1,962	856	524	335	247	7,291	3,107	4,070	114
1989	9,557	2,065	991	493	325	256	7,492	3,168	4,224	100
1990	9,897	2,261	1,112	488	408	253	7,636	3,170	4,413	53
1991	10,454	2,338	1,154	506	389	289	8,116	3,391	4,655	70
1992	11,736	2,544	1,467	432	406	239	9,192	3,725	5,396	71
1993	12,662	2,902	1,818	421	416	247	9,760	3,612	6,044	104
1994	13,044	2,939	1,774	430	506	229	10,105	3,642	6,385	78
1995	14,981	3,457	2,215	462	555	225	11,524	3,927	7,528	69
1996	16,992	4,446	3,078	451	624	293	12,546	4,423	8,053	70

Data source: Administrative Office of the U.S. Courts, *Report of the Proceedings of the Judicial Conference of the United States*, annual (table B-1A).

Appeals involving State inmates (10.2% average annual increase) increased at about the same rates as Federal inmates (9.7% annually).

Approximately 66% of the increase in State appeals was the result of an increase in appeals of civil rights petitions. Appeals of civil right petitions increased an average of 11% annually — from 1,578 during 1980 to 8,053 during 1996. Appeals of habeas corpus petitions also substantially increased during this period — from 1,020 during 1980 to 4,423 during 1995.

Approximately 76% of the increase in Federal appeals was for petitions challenging the sentence imposed. These appeals increased from 450 during 1980 to 3,078 during 1996 — an average annual increase of 13%. About 90% of this increase occurred after the implementation of Federal sentencing reforms in 1987.

Although fewer in number than appeals of petitions to vacate the sentence imposed, appeals of Federal habeas corpus and civil rights petitions also increased. Appeals of habeas corpus petitions increased at an average annual rate of 3% — from 302 during 1980 to 451 during 1996 — and appeals of civil rights petitions increased 9% annually — from 159 during 1980 to 624 during 1996.

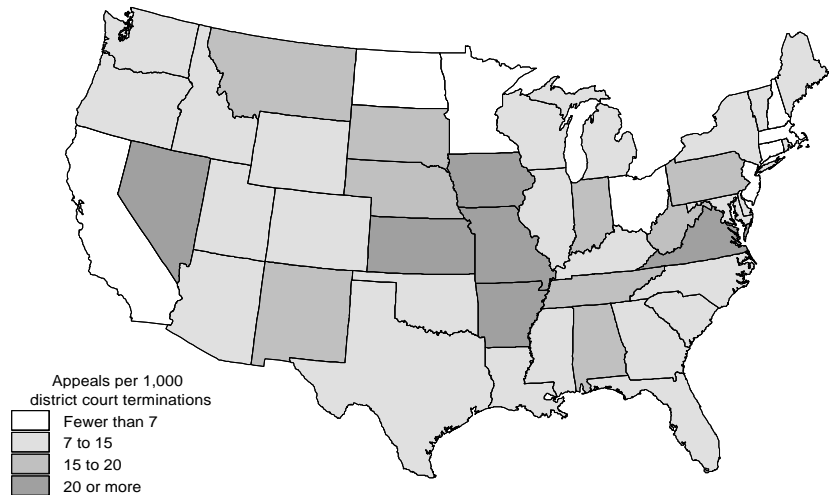
Filing rate

Between 1980 and 1996 the rate at which Federal and State prisoner petitions were appealed increased 48% — from 17.2 appellate filings for every 100 district court terminations during 1980 to 25.4 during 1996 (figure 5).

The appeal rate of Federal petitions increased at a greater rate than that of State petitions. Appeals of Federal petitions increased 41% — from 26.4 appeals for every 100 district court terminations during 1980 to 37.1

during 1995. Appeals of State petitions increased 48% — from 15.2 appeals for every 100 district court terminations during 1980 to 22.5 during 1996.

Prisoner petitions filed by State prison inmates in U.S. courts of appeal, 1995



Note: Alaska (9.4) and Hawaii (4.8) are not depicted.

Figure 4

Prisoner petitions filed in U.S. courts of appeal, 1980-96

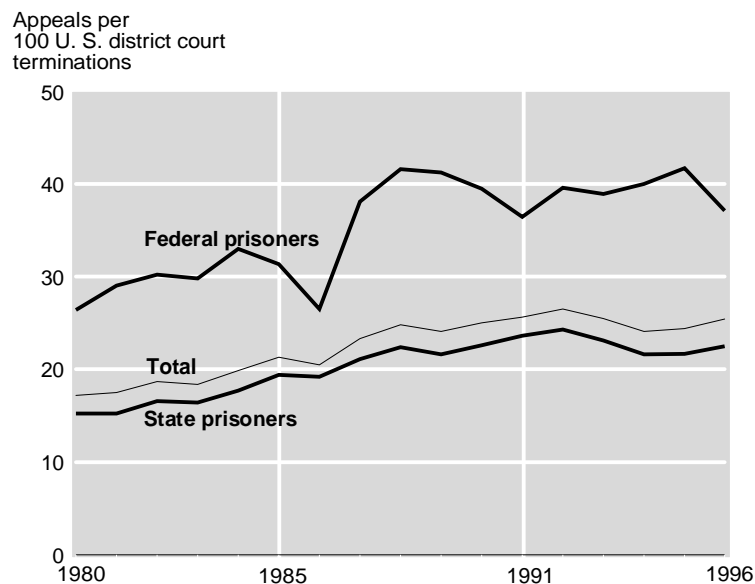


Figure 5

Prisoner petitions adjudicated

Mode of disposition

During 1995, 14,333 prisoner petitions involving Federal and State inmates were terminated in U.S. courts of appeal. Nearly all (93.7%) of these cases were disposed of without oral hearings (table 10). In 46% of the cases, the hearings were waived. The remainder were terminated on jurisdictional bases — the court did not have authority to hear the case (11%) — or procedural bases — default or voluntary dismissal (37%).

Nearly equal proportions of appeals involving Federal and State inmates were disposed of without oral hearings — 94.4% and 93.5%, respectively. Petitions involving State inmates, however, were more likely than those involving Federal inmates to be terminated on jurisdictional or procedural bases: approximately 51.8% of petitions from State inmates were terminated on jurisdictional or procedural bases compared with 31.8% of Federal petitions.

Habeas corpus petitions — especially those from inmates on death row — were the most likely to be held for oral hearings (table 10). During 1995 approximately 11% of all habeas corpus petitions involving Federal and State inmates were disposed of following an oral hearing, compared to 6.9% or less of other types of petitions (not shown in a table).

Table 10. Method of disposition for prisoner petitions terminated in U.S. courts of appeal, 1995

Jurisdiction and type of petition	Number	Percent of dispositions of appeals			
		After oral hearings	Without oral hearings		Procedural termination
		Hearings waived	No jurisdiction		
Total*	14,333	6.3%	46.3%	10.5%	36.9%
Federal	3,151	5.6%	62.5%	6.3%	25.5%
Vacate sentence	1,973	6.1	66.8	4.7	22.5
Habeas corpus	426	8.7	50.0	5.2	36.2
Death penalty	0	--	--	--	--
Other	426	8.7	50.0	5.2	36.2
Civil rights	530	2.6	53.6	12.8	30.9
Other	222	6.3	69.8	7.2	19.8
State	11,177	6.5%	41.7%	11.7	40.1%
Habeas corpus	3,957	11.0	28.4	6.5	54.2
Death penalty	121	62.0	25.6	.8	11.6
Other	3,836	9.4	28.4	6.6	55.5
Civil rights	7,170	4.0	49.0	14.6	32.4
Other	50	2.0	60.0	8.0	30.0

---No cases of this type occurred.

*Includes 5 cases for which jurisdiction could not be determined.

Data source: Administrative Office of the U.S. Courts, appellate data file (1995).

Disposition

Of the 14,333 prisoner petitions terminated in U.S. courts of appeal during 1995, the courts dismissed 52.4% of the cases, affirmed the district courts' decision in 41.7% of the cases, and reversed or remanded the case to the district court (at least in part) in 5.6% of the cases (table 11).

Appeals involving State inmates were more likely to be dismissed than those involving Federal inmates. During 1995, approximately 57% of appeals involving State inmates were dismissed compared to 37% of those involving Federal inmates. However, of those cases terminated on their merits, the courts of appeal found an

error in nearly twice as many cases involving State inmates as Federal inmates: 13.6% of the appeals involving State inmates were either reversed or remanded compared to 7.6% of the appeals involving Federal inmates (not shown in a table).

The courts of appeal most often overruled the decisions of the district courts in habeas corpus cases. Of those cases for which there was a judgment during 1995, 21.1% of habeas corpus cases involving Federal inmates and 19% of those involving State inmates were reversed or remanded, at least in part. Conversely, those cases addressing the constitutionality of Federal prison sentences were the most likely (92%) to be affirmed on appeal (not shown in a table).

Case processing time

Appeals involving prisoner petitions terminated during 1995 took approx-

imately 6 months (191 days), on average, to process (table 12). Half of the cases, however, took less than 5 months (144 days). Appeals involving

Federal inmates took slightly longer than those involving State inmates — 222 days for Federal inmates compared with 182 days for State inmates. The longer case processing time for Federal petitions reflects, in part, the longer case processing time (237 days, on average) for petitions challenging the sentence imposed.

Generally, appeals involving civil rights petitions took the least amount of time to process, on average: 178 days for Federal petitions and 175 days for State petitions. Ten percent of these cases took about a month to conclude.

While those petitions that were dismissed because of jurisdictional or procedural issues took the least amount of time to process, these cases were on the courts' docket for almost 4 months (116 days), on average (not shown in a table). Those cases that required oral hearings took the longest to process — more than a year, on average.

Similar to the differences at the district court level, cases where counsel represented the inmate took much longer to process than those in which the inmates represented themselves. During 1995, cases in which counsel represented the inmate took about 50% longer (279 days, on average) to process than those in which the inmate represented himself (180 days) (not shown in table).

Table 11. Disposition of prisoner petitions terminated in U.S. courts of appeal, 1995

Jurisdiction and type of petition	Number	Percent of cases Terminated on the merits					
		Dismissed	Affirmed	Reversed	Partial part	Remanded	Other
Total*	14,333	52.4%	41.7%	2.8%	2.0%	.8%	.2%
Federal	3,151	37.0%	58.0%	2.2%	1.7%	.9%	.2%
Vacate sentence	1,973	31.5	63.5	2.2	2.0	.7	.1
Habeas corpus	426	49.8	44.1	3.3	1.2	1.6	--
Death penalty	0	--	--	--	--	--	--
Other	426	49.8	44.1	3.3	1.2	1.6	--
Civil rights	530	49.6	45.5	2.3	1.3	.6	.8
Other	222	30.6	66.2	.5	.9	1.8	--
State	11,177	56.7%	37.1%	3.0%	2.1%	.8%	.3
Habeas corpus	3,957	62.2	31.5	3.7	1.5	.8	.3
Death penalty	121	14.0	49.6	17.4	17.4	--	1.7
Other	3,836	63.7	31.0	3.3	1.0	.8	.2
Civil rights	7,170	53.8	40.1	2.5	2.5	.8	.2
Other	50	46.0	48.0	6.0	--	--	--

*Includes 5 cases for which jurisdiction could not be determined.
 ---No cases of this type occurred.
 Data source: Administrative Office of the U.S. Courts, appellate data file (1995).

Table 12. Case processing time for prisoner petitions terminated in U.S. courts of appeal, 1995

Jurisdiction and type of petition	Number	Days between filing and termination Percentiles					
		10th	25th	50th	75th	90th	Average
Total*	14,333	30	72	144	252	403	190.9
Federal	3,151	45	104	184	288	438	221.7
Vacate sentence	1,973	54	120	201	303	457	237.1
Habeas corpus	426	41	89	185	286	475	219.7
Death penalty	0	--	--	--	--	--	--
Other	426	41	89	185	286	475	219.7
Civil rights	530	34	73	138	234	374	178.3
Other	222	52	89	142	265	407	192.6
State	11,177	27	67	133	240	390	182.2
Habeas corpus	3,957	23	66	143	270	415	195.1
Death penalty	121	0	2	282	492	899	340.8
Other	3,836	24	67	142	264	407	190.5
Civil rights	7,170	29	68	127	227	373	175.2
Other	50	23	75	126	201	362	163.5

*Includes 5 cases for which jurisdiction could not be determined.
 --- No cases of this type occurred.
 Data source: Administrative Office of the U.S. Courts, civil data file (1995).

Background information: Types of prisoner petitions

Types of prisoner petitions

Pursuant to Federal law, Federal and State inmates are able to file suits in the Federal courts to: (1) challenge the constitutionality of their imprisonment (habeas corpus); (2) redress civil rights violations by government officials; (3) compel government officials to perform a duty owed to the petitioner (mandamus); and, (4) in the case of Federal inmates, to challenge the constitutionality of the sentence imposed. (Although not addressed in this report, Federal inmates may also file claims against prison administrators and guards under the Federal Tort Claims Act.⁸ Claims filed pursuant to this act, however, are limited to those seeking to redress damages or injuries arising from administrative negligence.)⁹

Habeas corpus

The writ of habeas corpus allows Federal and State inmates to file petitions in the Federal courts challenging the constitutionality of their imprisonment. The basic principle of the habeas corpus writ is that the government is accountable to the courts for a person's imprisonment. If the government cannot show that the imprisonment conforms with the fundamental requirements of law, the person is entitled to immediate release.¹⁰

Habeas corpus petitions were originally authorized in the U.S. Constitution and were subsequently included in the Judiciary Act of 1789.¹¹ The Judiciary Act, as amended, provides that the Federal courts shall have the power to grant writs of habeas corpus in all cases where the person was restrained in violation of the Constitution

or any law of the United States and under the authority of the United States. While the Judiciary Act only authorized the Federal courts to hear habeas corpus petitions filed by Federal prisoners, subsequent legislation extended the writ to prisoners held by the States.¹² However, State inmates are required to exhaust all remedies available to them at the State level before filing a petition at the Federal level.¹³

The Supreme Court has generally held that so long as there are no procedural impediments, as defined by statute, an inmate can raise most constitutional or jurisdictional claims in a habeas petition.¹⁴ The Court, however, has restricted the use of habeas corpus to raise constitutional claims — such as fourth amendment claims of illegally seized evidence — that could have been adjudicated either at trial or on direct appellate review.¹⁵

Previous BJS reports indicated that “ineffective assistance of counsel” was the most frequently cited reason for habeas corpus petitions filed by State inmates — 25% of habeas corpus petitions cited ineffective counsel as the basis for the petition. Other commonly cited reasons include errors by the trial court (15%), due process (14%), and self-incrimination (12%).¹⁶ In concordance with *Stone v. Powell*, Fourth amendment claims of illegal search and seizure are infrequent — 5% of habeas corpus petitions surveyed cited illegal search and seizure as the basis of the petition.¹⁵

¹²28 U.S.C. § 2254.

¹³28 U.S.C. § 2254(b).

¹⁴*Brown v. Allen*, 344 U.S. 443 (1953).

¹⁵*Stone v. Powell*, 428 U.S. 465 (1976).

¹⁶Roger A. Hanson and Henry W.K. Daley, *Federal Habeas Corpus Review* BJS Discussion Paper, NCJ-155504 (1995).

¹⁷*Ibid.*

Civil rights

Federal and State inmates may file suits in the Federal courts alleging civil rights violations by government officials. The foundation for these petitions originates in the 14th amendment to the U.S. Constitution. The 14th amendment prohibits the States from “depriv[ing] any person from life, liberty, or property without due process of law.”¹⁸ The Civil Rights Act of 1871 provided the mechanism for persons to seek relief from constitutional deprivations. Pursuant to 42 U.S.C. § 1983, State officials can be held liable for the deprivation of any civil rights secured by the Constitution. While this act did not address violations by Federal officials, in 1971 the Supreme Court extended the Civil Rights Act to cover violations by Federal officials.¹⁹

Prison inmates, despite being explicitly denied certain rights such as freedom of movement and freedom from unreasonable searches and seizures, do retain certain civil rights.²⁰ The Supreme Court has held that to some extent, inmates continue to enjoy the rights of religious freedom,²¹ speech,²² association,²³ and due process.²⁴ And, to a greater extent, they enjoy the right to be free from racial discrimination²⁵ and cruel and unusual punishment.²⁶ Recognizing that access to the courts by inmates

¹⁸U.S. CONST. amend. XIV, § 1.

¹⁹*Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

²⁰*Cooper v. Pate*, 378 U.S. 546 (1964).

²¹*Cruz v. Beto*, 405 U.S. 319 (1972).

²²*Pell v. Procunier*, 417 U.S. 817 (1974).

²³*Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119 (1977).

²⁴*Wolff v. McDonnell*, 418 U.S. 539 (1978).

²⁵*Lee v. Washington*, 390 U.S. 333 (1968).

²⁶*Rhodes v. Chapman*, 452 U.S. 337 (1981).

⁸*United States v. Muniz* (1963).

⁹28 U.S.C. § 2674.

¹⁰*Fay v. Noia*, 372 U.S. 391 (1963).

¹¹U.S. CONST. art. I, § 9, cl. 2; Judiciary Act of 1789, Ch. 20, 1 Stat. 73 as codified at 28 U.S.C. § 2241.

is necessary for the protection of these rights, the Supreme Court has ruled that inmates are not barred from bringing lawsuits against government officials.²⁷ Since this decision, the Supreme Court has ruled on many cases defining the scope of inmates' rights and their ability to use the courts.

Previous BJS reports indicated that physical security (21%), medical treatment (17%), and due process (13%) are the most frequently cited issues in civil rights petitions filed by State inmates. Issues such as freedom of religious expression (4%), living conditions (4%), and assaults by guards (3%) are relatively infrequent.²⁸ (Data describing the specific issues were not available in the datasets used for this report.)

In 1980, Congress enacted the Civil Rights of Institutionalized Persons Act (CRIPA).²⁹ This act sought to reduce the number of civil rights petitions filed in the Federal courts by requiring inmates to exhaust State-level administrative remedies before filing their petitions in the Federal courts.³⁰ By requiring inmates to exhaust the available administrative remedies, Congress sought to reserve the Federal courts for more serious civil rights violations or other significant constitutional issues. Further, to ensure that civil rights petitions are handled consistently across States and institutions, the Act requires that the institution's administrative procedures be certified by either the Department

of Justice or the local Federal district court. Inmates in facilities not certified are not required to exhaust the institutional-level procedures before filing a petition in Federal court.

Mandamus

The writ of mandamus is a judicial remedy used to compel a lower court or government officer to perform a duty owed to the plaintiff.³¹ Like habeas corpus, mandamus is an extraordinary remedy, based in common law, that is only used when the plaintiff has no other adequate means to attain the desired relief.³² However, the courts have held that mandamus can only be used to compel a government official to perform a ministerial or nondiscretionary duty.³³ Additionally, the Federal courts do not have jurisdiction to issue writs compelling action by State courts and officials.³⁴ Consequently, mandamus petitions are often dismissed: during 1995, more than 70% of mandamus petitions filed by Federal and State inmates were dismissed (table 5).

Compared to other prisoner petitions, mandamus petitions are infrequent. Mandamus petitions tend to be varied in nature and specific to individual circumstances. The courts have granted mandamus for limited uses such as the following: to direct lower courts to hear and decide pending cases in a timely manner;³⁵ to permit inmates to file petitions in forma pauperis or pro se;³⁶ to compel the correction of a sentence

computation;³⁷ to compel a State to prosecute an inmate while the inmate is in the custody of another jurisdiction;³⁸ to allow inmates to vote absentee, where permitted by law;³⁹ and, to compel the payment of Federal witness fees to inmates.⁴⁰

Constitutionality of the sentence imposed

Federal inmates may file petitions in the Federal courts to have a sentence vacated, set aside, or otherwise corrected upon the ground that the sentence was imposed in violation of the Constitution or other law of the United States, that the sentencing court was without jurisdiction to impose the sentence, or that the sentence was greater than the statutory maximum authorized by law.⁴¹ The basic principle underlying these petitions is the same as that of habeas corpus: if the imprisonment is unlawful, the inmate is entitled to release (or a corrected sentence).

While petitions challenging the sentence imposed are similar in principle to habeas corpus petitions, in 1948, Congress distinguished the two to address practical difficulties that had arisen in administering the habeas corpus jurisdiction of the Federal courts such as: (1) to reduce the number of habeas corpus petitions filed by Federal inmates in those Federal judicial districts where Federal correctional facilities are located; and (2) to address practical considerations such as evidence gathering and production

²⁷ See, *Ex parte Hull*, 312 U.S. 546 (1941) and *United States v. Muniz*, 374 U.S. 150 (1963).

²⁸ Roger A. Hanson and Henry W. K. Daley, *Challenging the Conditions of Prisons and Jails*, BJS Discussion Paper, NCJ-151652, 1995.

²⁹ Pub. L. No.: 96-247, 97 Stat. 349 (1980) (codified in scattered sections of 42 U.S.C.).

³⁰ 42 U.S.C. § 1997e.

³¹ 28 U.S.C. § 1361.

³² *Ex parte Fahey*, 332 U.S. 258 (1947).

³³ *Marquez-Ramos v. Reno*, 69 F.3d 477 (1995).

³⁴ See, *Gurley v. Superior Court of Mecklenburg County*, 411 F.2d 586 (4th Cir. 1969).

³⁵ See, *Johnson v. Rogers*, 917 F.2d 1283 (10th Cir. 1990) but, see, *In Re Hinton*, 61 F.3d 900, 1995 WL 417865 (4th Cir.).

³⁶ *In Re Smith*, 600 F.2d 714 (8th Cir. 1979); *McNeil v. Guthrie*, 945 F.2d 1163 (10th Cir. 1991).

³⁷ *Savage v. Henderson*, 475 F.2d 78 (5th Cir. 1973); *Johnson v. Smith*, 696 F.2d 1334 (11th Cir. 1983); *Holmes v. U.S. Board of Parole*, 541 F.2d 1243 (7th Cir. 1976).

³⁸ *Smith v. Hoey*, 393 U.S. 374 (1969).

³⁹ *O'Brien v. Skinner*, 414 U.S. 524 (1974).

⁴⁰ *Demarest v. Manspeaker*, 498 U.S. 184 (1991).

⁴¹ 28 U.S.C. § 2255.

of witnesses.⁴² Since habeas corpus petitions pertain to the legality of the imprisonment (including an illegal sentence), inmates are required to file habeas corpus petitions in the judicial district in which they are imprisoned rather than the district in which they were convicted and/or sentenced.⁴³

Prior to the enactment of 28 U.S.C. § 2255, the geographical separation of the sentencing court and the Federal

⁴²*Ibid.*

⁴³*Ahrens v. Clark*, 335 U.S. 188 (1948).

prison presented a problem for the Federal courts: habeas corpus petitions were disproportionately concentrated in certain judicial districts. For instance, between 1942 and 1948, 63% of all habeas corpus petitions filed by Federal inmates were filed in 5 (Northern California, Northern Georgia, Kansas, Western Washington, and Western Missouri) of the then 84 Federal judicial districts.⁴⁴

⁴⁴William H. Speck, "Statistics on Federal Habeas Corpus," *Ohio State Law Journal*, vol. 10, 1949, pp. 337-352.

At the request of the Federal judiciary, Congress created a new statute that distinguished petitions challenging the sentence imposed from those that otherwise challenged the constitutionality of the imprisonment.⁴⁵ This new statute required inmates who challenged the sentence imposed to file the petition in the district in which they were originally sentenced.⁴⁶ The remaining habeas corpus cases would continue to be filed in the district in which the inmate was confined.

⁴⁵28 U.S.C. § 2255.

⁴⁶28 U.S.C. § 1651(a).

Recent Federal legislation addressing prisoner petitions

Prison Litigation Reform Act^a

The Prison Litigation Reform Act, enacted in April 1996, requires that before an inmate can file a civil rights action in Federal court the inmate must —

- exhaust all available administrative remedies before filing the case whether or not the facility's grievance procedures were certified by the Department of Justice or the Federal court; and
- show physical injury in order to receive damages for mental or emotional injury suffered while in custody.

Additionally, the Act generally prohibits an inmate from filing a petition in forma pauperis (as an indigent without liability for court fees and costs) if the inmate has filed three or more actions in Federal court that were dismissed as frivolous or malicious or for failing to state a claim on which relief can be granted. Further, inmates filing petitions in forma pauperis are required to pay the appropriate filing fees (and costs, where applicable) from their existing assets or any funds available to them through their trust fund accounts within the correctional system.

This act also provides for sanctions to be imposed on Federal inmates who abuse the court system. The act authorizes the Federal courts to order the revocation of any unvested good time of Federal inmates whose petitions were dismissed because it was filed for malicious purposes, solely to harass the other party, or because the inmate presented false testimony or evidence.

^aPub. L. No. 104-134, 110 Stat. 1321 (codified as amended in scattered sections of 18, 28, and 42 U.S.C.).

Antiterrorism and Effective Death Penalty Act^b

The Antiterrorism and Effective Death Penalty Act, also enacted in April 1996, addresses habeas corpus petitions that are filed in the Federal courts. Like the Prison Litigation Reform Act, this act requires State inmates to exhaust all available remedies at the State level before filing a habeas corpus petition in Federal court. Additionally, the Act establishes a statute of limitation whereby both Federal and State inmates have 1 year from the time their conviction becomes final — after the direct appeals of their conviction and/or sentence are exhausted — to file a habeas petition in Federal court. However, if the inmate was provided counsel for any post-conviction proceeding (such as direct appeal of the conviction), then the petition must be filed within 6 months.

The act also requires successive petitions to be approved by a panel of the applicable Federal court of appeals. Successive petitions are limited to cases that present newly discovered evidence that would have undermined the jury's verdict or that involve new constitutional rights that have been retroactively applied by the Supreme Court. Additionally, this act defined the Federal courts' ability to adjudicate habeas corpus petitions by State inmates. The Federal courts are required to show deference to the determination of the State courts, provided that these determinations are neither "contrary to" nor an "unreasonable application of" clearly established Federal law as determined by the Supreme Court.

^bPub. L. No. 104-132, 110 Stat. 1218 (codified as amended in scattered sections of 28 U.S.C.).

Methodology

The primary source of data for tables presented in this report is the Federal Judicial Center (FJC) Integrated database. The Integrated Database is composed of the criminal, civil, and appellate data files maintained by the Administrative Office of the U.S. Courts. These data are archived at the National Archive of Criminal Justice Data by the FJC (ICPSR 8429). Data tabulations, except where otherwise noted, were prepared from BJS staff analysis of these databases.

Time-series data were compiled from the annual reports of the Judicial Conference of the United States. Prior to 1992, the period reported by the Judicial Conference was July 1 through June 30; beginning in 1992, however, the reporting period was changed to October 1 through September 30 to correspond to the Federal fiscal year. No effort was made to correct for the missing 3 months (7/92 to 9/92) of data.