U.S. Department of Justice
Bureau of Justice Statistics

Bureau of Justice Statistics
Special Report

Federal Review of State Prisoner Petitions

Habeas Corpus

March 1984

The right of convicted State offenders to attack State court determinations pursuant to a Federal writ of habeas corpus has sparked debate among legal scholars, criminologists, and judges during the past decade. A key factor underlying this debate has been the dramatic increase (almost 700%) in filings of State prisoner habeas corpus petitions in the past 20 years.

This report provides a comprehensive summary of available statistical data describing the Federal processing of State prisoner habeas corpus actions. The report has two sections. Section I presents aggregate data describing rates, trends, and comparisons of State prisoner habeas corpus filings in Federal district and appellate courts. Tables and figures are included to illustrate major points. Aggregate data included in this section are drawn primarily from the extensive statistical series compiled by the Administrative Office of the U.S. Courts. Section II summarizes findings of a study of Federal review of State prisoner habeas corpus petitions. Funded by the U.S. Department of Justice in 1979, this study represents the only empirical statistical study of this issue completed within the past 5 years that addresses activity in multiple jurisdictions.[1] It is hoped that the report will prove useful for the evaluation of current procedures and the review of proposed legislative reforms.

Background issues

Recently introduced legislative proposals directly address the reform of Federal habeas corpus procedures. In general terms, the proposed revisions relate to the standard of review in habeas corpus proceedings, the effect of procedural defaults on the subsequent availability of habeas corpus relief, the time within which habeas corpus relief may be sought, the requirement of exhaustion of State remedies, and the procedure for appeal in habeas corpus proceedings.

Reform of procedures governing Federal review of State prisoner habeas corpus petitions was also proposed in recommendation 42 of the Report of the Attorney General's Task Force on Violent Crime.

Habeas corpus procedures provide a means for convicted persons to attack the validity of their convictions after their appeals have been unsuccessful. Article III of the Constitution extends "the great writ" of habeas corpus to Federal prisoners; the right of State prisoners to obtain Federal review of State court convictions was legislatively established by the Congress in 1867.

In recent years, increasing concern has arisen over the impact current procedures for Federal review of State convictions may have on the effective operation of the criminal justice system and on its ability fully to protect the rights of individual citizens as well as of the accused. In particular, debate has focused on the extent to which current procedures may affect the delicate balance in State/Federal judicial relations, the finality of criminal convictions, and the unique interests of the victims of crime. Concern has also focused on the constitutional implications of habeas corpus review and on the impact that procedural limitations might have on the peaceful expression of inmate grievances.

This report has been prepared to provide background statistical data relevant to the discussion of habeas corpus and to serve as a resource for future consideration of these issues.

In applying these data, it must be recognized, however, that statistical data do not, and in some cases cannot, directly resolve some of the basic dilemmas relating to habeas corpus procedures. This is not intended to detract from the significance of the statistical data. Rather, it is merely to emphasize the fact that the complexity of the issues involved in habeas corpus review requires prudent judgment, which statistical analysis can inform but not replace.

Steven R. Schlesinger
Director

The debate regarding habeas corpus reforms focuses on the extent to which:

- current procedures reduce or eliminate the finality of criminal determinations by permitting Federal collateral review of decisions that have been fully appealed on the State level;
- habeas corpus procedures defeat the goal of deterring crime by undermining the certainty that sanctions will be applied where criminal laws are violated;
- the lengthy time delays and uncertainties that may result from Federal review of habeas corpus actions frustrate the interests of victims and witnesses;

[1] Paul H. Robinson, An Empirical Study of Habeas Corpus Review of State Court Judgments (U.S. Department of Justice Project JADAG-79-C-002).

- potential Federal reanalysis of issues and facts that have been fully adjudicated at the highest level in the State judicial system exacerbates Federal-State judicial relations;
- the current likelihood that issues may be relitigated at the Federal level affects the incentive for a comprehensive analysis of cases in the State courts or the rights of those individuals who do not pursue Federal review actions;
- the length of time that elapses prior to Federal habeas corpus review (and subsequent relitigation at the State level) limits the availability and reliability of evidence and witnesses;
- habeas corpus claims are determined to be frivolous and result in an undue workload at both the State and Federal court levels;
- the protection and uniform enforcement of federally established constitutional rights through habeas corpus review represents an overriding consideration in the American jurisprudential system;
- any limitation on habeas corpus review would tend to undermine the constitutional rights of individual citizens;
- practical factors (such as manpower and fiscal matters) should be considered in evaluating procedures designed to protect constitutional rights; and
- changes in the scope of habeas corpus review might have an impact on prisoners' conduct by increasing prisoners' frustrations.

The data presented in this report provide a statistical portrait that may help illuminate these issues. The report includes data describing rates and trends of habeas corpus filings and terminations, time intervals prior to case filings, frequency of petitions, and petitioner success rates.

It should be understood that the issues associated with habeas corpus reform are significant and basic to the criminal justice system and that, accordingly, the statistical resources presented in the report may not, in all cases, provide complete answers to the complex issues involved.

Section I. Aggregate statistical data

This section presents aggregate data describing the processing of State prisoner habeas corpus petitions in the Federal judicial system. To the extent possible, the data describe habeas corpus activity at both the district and appellate court levels.

Trends in district court case filings, 1961-82

Figure 1 displays the trend in habeas corpus filings in U.S. district courts by State and Federal prisoners between 1961 and 1982. The graph reflects the magnitude of the increase in State prisoner habeas corpus filings (an increase of about 700%) and the even greater increase in total State prisoner petitions filed. Total prisoner petitions include habeas corpus, prisoner civil rights, and mandamus actions. Figure 1 also illustrates that the number of Federal habeas corpus actions filed in U.S. district courts by State prisoners has consistently exceeded the number of petitions filed by Federal prisoners and that filings by State prisoners have increased at a higher rate than filings by Federal prisoners.

Table 1. Prisoner petitions filed in the U.S. district courts for years ending June 30, 1961-82

Type of petition	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
Total prisoner petitions	2,609	2,948	4,254	6,240	7,888	8,540	10,443	11,152	12,924	15,997	16,266
Petitions by Federal prisoners[a]	1,589	1,496	1,630	2,098	2,559	2,292	2,639	2,851	3,612	4,185	4,121
Habeas corpus	868	868	862	882	974	1,017	1,045	1,045	1,373	1,600	1,671
Mandamus, etc.	—	—	b	b	b	333	474	516	564	720	901
Civil rights	—	—	b	b	b	15	58	60	81	136	214
Motions to vacate sentence	560	546	595	972	1,244	863	958	1,099	1,444	1,729	1,335
Petitions by State prisoners[c]	1,020	1,452	2,624	4,142	5,329	6,248	7,804	8,301	9,312	11,812	12,145
Habeas corpus	1,020	1,408	2,106	3,694	4,845	5,839	6,201	6,488	7,359	9,063	8,372
Mandamus, etc.	—	—	b	b	b	691	725	741	684	92	858
Civil rights	—	—	b	b	b	218	878	1,072	1,269	2,657	2,915

Type of petition	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
Total prisoner petitions	16,267	17,218	18,410	19,307	19,809	19,537	21,924	23,001	23,287	27,711	29,303
Petitions by Federal prisoners[a]	4,179	4,535	4,987	5,047	4,780	4,691	4,955	4,499	3,713	4,104	4,328
Habeas corpus	1,368	1,294	1,718	1,682	1,421	1,508	1,730	1,577	1,413	1,629	1,927
Mandamus, etc.	968	1,105	1,002	1,197	1,164	779	665	427	375	393	381
Civil rights	252	414	445	478	502	483	636	588	603	834	834
Motions to vacate sentence	1,591	1,722	1,822	1,690	1,693	1,921	1,924	1,907	1,322	1,248	1,186
Petitions by State prisoners[c]	12,088	12,683	13,423	14,260	15,029	14,846	16,869	18,502	19,574	23,607	24,975
Habeas corpus	7,949	7,784	7,626	7,843	7,833	6,866	7,033	7,123	7,031	7,790	8,059
Mandamus, etc.	791	725	561	289	238	228	206	184	146	178	175
Civil rights	3,348	4,174	5,236	6,128	6,958	7,752	9,730	11,195	12,397	15,639	16,741

[a] "Parole board review" and "Other prisoner petitions" not shown due to change in classification.
[b] Included with other prisoner petitions.
[c] "Other prisoner petitions" not shown due to change in classification.
Source: Administrative Office of the U.S. Courts, Annual Report, 1961-82.

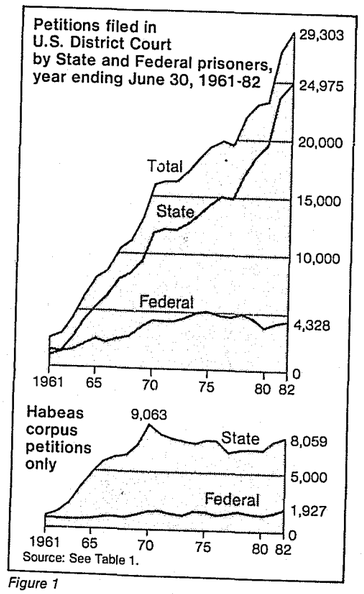

Figure 1

The number of State prisoner habeas corpus cases filed in Federal district courts between 1961 and 1982 is shown in greater detail in table 1. As noted, 1982 filings represent an increase of almost 700% (690%) over 1961 filings. Although filings peaked in 1970 (9,063 filings) and leveled off during the 1970's (with minor decreases during the mid-1970's), the leveling-off trend appears to have reversed in the past 5 years; 1982 filings (8,059) represent an increase of 17.4% over the 1977 level and increases of 14.6% and 3.5% over 1980 and 1981 filings, respectively. The major increase in State prisoner habeas corpus filings in Federal district courts (789%) occurred between 1961 and 1970. This may reflect the impact of court rulings that expanded the scope of habeas corpus review and permitted Federal habeas corpus review of claims foreclosed from State review by procedural limitations. The increase in case filings may also reflect changes in judicial interpretation of constitutional standards that may have established the basis for collateral habeas corpus review at the Federal level.

As noted, a general leveling off of State habeas corpus activity in U.S. district courts appears to have occurred during the 1970's. It has been suggested that the reduction in case filings during the early 1970's may reflect the gradual

Table 2. State prisoner habeas corpus petitions filed in U.S. district courts, by circuit, 1969-82

	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
Total	7,359	9,063	8,372	7,949	7,784	7,626	7,843	7,833	6,866	7,033	7,123	7,031	7,790	8,059
D.C.	113	87	84	58	43	19	52	59	47	47	34	19	24	28
First	96	130	161	143	124	120	109	160	123	116	150	145	125	128
Second	736	841	813	704	777	731	547	628	502	479	595	666	663	738
Third	777	824	700	508	355	401	418	428	370	393	455	408	484	502
Fourth	1,233	1,243	1,324	1,385	1,278	1,036	1,047	1,132	1,074	1,150	1,133	1,065	1,104	1,077
Fifth	1,246	1,801	1,884	2,083	2,296	2,220	2,312	2,534	2,141	2,027	2,076	1,989	2,348	1,148
Sixth	721	808	807	818	689	754	710	643	717	837	838	796	860	982
Seventh	435	530	539	581	448	336	363	383	313	439	430	486	658	718
Eighth	223	430	428	387	388	407	444	456	455	401	361	354	373	351
Ninth	1,286	1,768	1,231	865	917	1,251	1,508	1,071	809	781	727	832	851	835
Tenth	493	601	401	417	469	351	333	339	315	363	324	271	300	352
Eleventh*														1,200

*Established in 1981.
Source: Administrative Office of the U.S. Courts, Annual Report, 1969-82, table C-3.

passing of the social activism of the 1960's, the creation of fewer new retroactively actionable constitutional rights, the depletion of cases based on retroactive rights established during the 1960's, or the increased prisoner reliance upon prisoner civil rights actions. In considering habeas corpus trend-line data, therefore, caution should be exercised in analyzing comparisons based on peak-year filing rates.

Filings by judicial circuit, 1969-1982

The number of State prisoner habeas corpus petitions filed in U.S. district court in each Federal judicial circuit between 1969 and 1982 is shown in table 2. The data indicate that district courts in 4 of the 11 circuits (the 4th, 5th, 9th, and 11th) consistently handled a substantially greater number of habeas corpus petitions and accounted for a third to a half of petitions filed each year. Because circuits vary in terms of total annual caseload, however, assessing the impact of habeas corpus activity requires that the volume of habeas corpus petitions be measured against the overall caseload carried within the circuit. Table 3 describes the number of State prisoner habeas corpus petitions as a percentage of total district court civil filings for each circuit during 1982. The data indicate that a direct relationship did not always exist between absolute levels of habeas corpus filings and percentage caseloads within the circuits. In general, however, the circuits carrying the largest absolute number of State prisoner habeas corpus cases also had the highest percent of habeas corpus caseload. The highest percent was carried by the newly established 11th circuit.

Table 3. State prisoner habeas corpus filings in U.S. district courts as a percent of civil filings, by circuit, 1982

	Filings		
	Total civil	State prisoner habeas corpus	Habeas corpus as % of civil
Total	206,193	8,059	3.9
D.C.	3,722	28	.8
First	9,439	128	1.4
Second	18,482	738	4.0
Third	15,921	502	3.2
Fourth	19,842	1,077	5.4
Fifth	25,595	1,148	4.5
Sixth	22,141	982	4.4
Seventh	17,988	718	4.0
Eighth	14,183	351	2.5
Ninth	27,555	835	3.0
Tenth	11,082	352	3.2
Eleventh	20,243	1,200	5.9

Source: Administrative Office of the U.S. Courts, Annual Report, 1982, table C-3.

Filings as a percent of total civil cases

The data indicate that State prisoner habeas corpus petitions represented about 4% of total civil cases filed in Federal district courts during 1982 and that total State prisoner petitions (including both habeas corpus and civil rights actions) accounted for about 12% of total civil cases filed.

Caution should be exercised, however, in using these percentages as the basis for estimating the time and workload impact of habeas corpus actions on Federal district court activity.[2] Table 4 describes the number of State prisoner habeas corpus petitions as a percentage of the total civil cases filed in U.S. district courts for 1970-82 and shows that the percentage of habeas corpus filings has decreased since 1970. This reflects the fact that the level of State prisoner habeas corpus filings declined slightly during a period in which total civil filings more than doubled (from about 87,000 in 1970 to more than 206,000 in 1982).

Table 4. State prisoner habeas corpus filings as a percent of civil filings in U.S. district courts, 1970-82

	Filings		
Year	Total civil	State prisoner habeas corpus	Habeas corpus as a % of all civil
1970	87,321	9,063	10.4
1971	93,396	8,372	9.0
1972	96,173	7,949	8.3
1973	98,560	7,784	7.9
1974	103,530	7,626	7.4
1975	117,320	7,843	6.7
1976	130,597	7,833	6.0
1977	130,567	6,866	5.3
1978	138,770	7,033	5.1
1979	154,666	7,123	4.6
1980	168,789	7,031	4.2
1981	180,576	7,790	4.3
1982	206,193	8,059	3.9

Source: Administrative Office of the U.S. Courts, Annual Report, 1970-82, tables 20 (updated) and C-3.

Filings as a percent of prisoner population

The relationship between habeas corpus filings in Federal district courts by State prisoners and the number of prisoners incarcerated between 1961 and 1982 is shown in table 5. The data indicate that the percent of habeas corpus filings increased steadily until 1970 (the year of peak filings) and has decreased since that time. The data also reflect the substantial increase in prison population (about 117%) that occurred between 1970 and 1982.

District court terminations of State prisoner habeas corpus actions

The total number of State prisoner habeas corpus petitions terminated in Federal district courts during 1982 is shown in table 6 by judicial circuit. As expected, the circuits having higher filing rates (4th, 5th, and 11th) were responsible for almost half of all case terminations.

Table 7 compares habeas corpus terminations with total civil case terminations in Federal district court during 1982. The data indicate that State prisoner habeas

Table 5. State prisoner habeas corpus filings in U.S. district courts as a percent of State prisoner population, 1961-82

Year	Number of State prisoners	Habeas corpus filings	Percent
1961	196,453	1,020	.5
1962	194,886	1,408	.7
1963	194,155	2,106	1.1
1964	192,627	3,694	1.9
1965	189,855	4,845	2.6
1966	180,409	5,839	3.2
1967	175,317	6,201	3.5
1968	168,211	6,488	3.9
1969	176,384	7,359	4.2
1970	176,391	9,063	5.1
1971	177,113	8,372	4.7
1972	174,379	7,949	4.6
1973	181,396	7,784	4.3
1974	196,105	7,626	3.9
1975	216,462	7,843	3.6
1976	235,853	7,833	3.3
1977	267,936	6,866	2.6
1978	277,473	7,033	2.5
1979	288,086	7,123	2.5
1980	305,458	7,031	2.3
1981	341,255	7,790	2.3
1982	384,689	8,059	2.1

Note: 1961-76 estimates are based on prisoners in custody; later estimates, on prisoners under jurisdiction of State correctional authorities.
Source: Bureau of Justice Statistics, updated estimates from Prisoners in State and Federal Institutions, annual reports, 1974-82.

[2] Habeas corpus actions are somewhat different from other civil actions in that they may require the analysis of a complete court record. Habeas corpus actions are also, by virtue of the prisoner status of the petitioners, less likely to be disposed of without court involvement. (See table 7).

Table 6. State prisoner habeas corpus cases terminated in U.S. district courts, by circuit, 1982

	Terminations
Total	7,554
D.C.	28
First	129
Second	709
Third	543
Fourth	1,044
Fifth	1,091
Sixth	925
Seventh	590
Eighth	339
Ninth	753
Tenth	311
Eleventh	1,092

Source: Administrative Office of the U.S. Courts, Annual Report, 1982, table C-3B.

corpus terminations represented about 4% of the total district court civil case terminations. As shown in table 3, State prisoner habeas corpus petitions also represented about 4% of all civil cases filed during 1982. Although it is reasonable to assume that 1982 terminations may not necessarily represent cases filed during 1982, the data do appear to indicate that State prisoner habeas corpus cases, as a group, do not drop out of the system at a rate faster or slower than cases in general.

Table 7 also describes the nature of the dispositions for cases terminated in Federal district courts during 1982. The data indicate that, although 44% of all civil cases terminated were disposed of without any court action (e.g., only 56% required some judicial involvement), about 88% of all State prisoner habeas corpus case terminations involved some type of court action.[3]

Table 7 also shows that of those habeas corpus cases terminated after some court action, about 96% were terminated prior to pretrial activity. This finding reflects the fact that the review of habeas corpus actions is based primarily on an existing court record and that, accordingly, such cases rarely involve trial or pretrial activity.

Use of magistrates

The Federal Magistrates Act of 1968 authorized district courts to delegate specified duties to magistrates and to assign certain additional duties through court rules. These duties included authority for "preliminary review of applications for post-trial relief made by individuals convicted of criminal offenses and ... (for) ... submission of a report and recommendations to facilitate the decision of the district judge...." This authority was expanded in the 1979 amendments to the act, which specifically authorized district courts to empower magistrates to conduct evidentiary hearings.

[3]The percentage of total civil cases disposed of without court action has steadily increased since 1975 (37.8%) and has exceeded 40% in 1979 (43.0%); 1980 (44.4%); 1981 (41.7%); and 1982 (44.0%).

Table 7. State prisoner petition cases terminated in U.S. district courts, by type of termination, 1982

Nature of prisoner petition	Total cases	No court action	Court actions: Total court actions	Before pretrial	During or after pretrial	During or after trial: Total	Non-jury	Jury	Percent reaching trial
Habeas corpus	7,531	870	6,661	6,391	155	115	112	3	1.5
Mandamus and other	162	35	127	118	5	4	4	-	2.5
Civil rights	14,187	1,648	12,539	11,225	615	699	523	176	4.9
Total civil	185,507	81,602	103,905	67,287	25,292	11,326	6,538	4,788	6.1

Source: Administrative Office of the U.S. Courts, Annual Report, 1982, Table C-4.

Table 8 shows that the magistrate workload associated with all State prisoner petitions has increased substantially since 1977 and that about 38% more matters were handled in 1982 (5,960) than in 1980 (4,334). More than a third of all prisoner petition actions (37%) handled in 1982 involved review of State prisoner habeas corpus actions.

Table 8. Magistrate activity

Proceedings involving State prisoner petitions disposed of by magistrates, 1977-82

1977	4,208
1978	4,615
1979	4,512
1980	4,334
1981	5,513
1982	5,960

Type of prisoner petitions handled, 1982

Habeas corpus	
State	5,960
Federal	2,113
Civil rights	8,478
Total	16,551

Source: Administrative Office of the U.S. Courts, Annual Report, 1977-82, table M4-A; 1982, p. 166-b.

Appellate review of State prisoner habeas corpus actions

Table 9 describes the number of State prisoner habeas corpus appeals commenced in the Federal appellate courts between 1977 and 1982 and shows percent increases over time. As indicated in the table, reported court of appeals cases involving State prisoner habeas corpus actions commenced during 1982 showed an increase of 115% over the level of cases commenced in 1977 and an increase of more than 21% between 1981 and 1982. Although these increases reflect a change in reporting criteria during 1980, the percentages appear significant when viewed against the fact that total appeals activity during these periods increased by only 51% and 10% respectively, thus revealing a rate of increase for cases involving State prisoner habeas corpus appeals far in excess of the rate for cases overall. It is also notable that the 21% increase in State prisoner habeas corpus actions between 1981 and 1982 exceeded the increase in total appeals by State prisoners despite the greater number of State prisoner civil rights petitions filed in Federal district courts (table 1).

Comparison among case types

Table 10 shows the number of cases appealed from Federal district courts in each major area of case action during 1981 and 1982 and indicates the percent difference between 1981 and 1982. The data indicate that State prisoner habeas corpus appeals in 1982 represented about 8% of total civil cases and slightly more than 6% of combined civil and criminal appeals. The percent increase in State prisoner habeas corpus appeals between 1981 and 1982 also exceeded the percent increase for almost all other types of cases in which more than 100 cases arose.[4]

Appeals per circuit

The number of State prisoner habeas corpus appeals filed in each circuit is shown in table 11. As in the district courts, the volume of appeals was not equal among circuits; the highest case loads were carried in the second, fifth, sixth, and seventh circuits. When viewed proportionately, State prisoner habeas corpus appeals represented approximately 10% of total civil appeals in four circuits (second, fifth, sixth, and seventh) and more than 5% of total civil appeals in all but three circuits (D.C., first, and third).

[4]In considering these data, it must be understood that habeas corpus appeals procedures are somewhat unusual because of the requirement that petitioners obtain a certificate of probable cause for appeal. The data do not permit an assessment of the effect of this requirement on either the absolute number or nature of appeals commenced.

Table 9. U.S. courts of appeals cases arising from Federal district courts, 1977-82

Appeals	1977	1978	1979	1980	1981	1982	Percent increase over: 1977	1981
Total	15,641	15,649	16,322	19,259	21,391	23,551	50.6	10.1
State prisoner habeas corpus	712	676	859	1,020	1,258	1,529	114.7	21.5
All State prisoner petitions	1,480	1,466	1,978	2,668	3,156	3,630	145.3	15.1

Source: Administrative Office of the U.S. Courts, Annual Report, 1977-82, table B-7.

Appeal terminations

Table 12 describes the number of State prisoner habeas corpus appeals filed, terminated, and pending at the end of 1982, with breakdowns to indicate nature of disposition. As shown, fewer cases were terminated than filed (resulting in an increased backlog), and more than 56% of the terminated appeals involved some type of hearing or submission.

As in the case of the district court rulings, it should be understood that appellate court findings in favor of the petitioner generally result in further relitigation and do not necessarily imply the release of the prisoner.

Table 10. Types of cases filed in U.S. courts of appeals, 1981-82

Nature of suit/offense	1981	1982	Percent change
Total cases	21,391	23,551	10.1
Total civil cases	**17,014**	**18,784**	**10.4**
U.S. cases	4,940	5,517	11.7
U.S. Plaintiff	777	899	15.7
Contract actions	55	91	65.5
Real property actions	141	148	5.0
Civil rights	47	96	104.3
Labor	82	87	6.1
Tax suits	146	179	22.6
All other	306	298	-2.6
U.S. Defendant	4,163	4,618	10.9
Contract actions	212	148	-30.2
Real property actions	82	83	1.2
Tort actions	395	443	12.2
Civil rights	469	619	32.0
* Prisoner petitions			
Motions to vacate sentence	459	359	-21.8
Habeas corpus	344	455	32.3
Prisoner civil rights	234	234	—
Other	118	155	31.4
Social Security laws	642	779	21.3
Tax suits	239	248	3.8
Environmental matters	89	124	39.3
Freedom of Information Act	96	96	—
All other	784	875	11.6
Private cases	12,074	13,267	9.9
Federal constitutional question	9,005	9,994	11.0
Contract actions	307	373	21.5
Tort actions	581	600	3.3
Civil rights	2,587	2,787	7.7
Antitrust	391	378	-3.3
** Prisoner petitions			
Habeas corpus	1,258	1,529	21.5
Prisoner civil rights	1,851	2,038	10.1
Other prisoner petitions	47	63	34.0
Labor	580	704	21.4
Copyrights, patent, and trademark	394	434	10.2
Securities, commodities, exchange	301	305	1.3
Constitutionality of State statutes	114	117	2.6
All other	594	666	12.1
Diversity of citizenship	3,030	3,217	6.2
Contract actions	1,815	1,808	-0.4
Tort actions	1,029	1,240	20.5
All other	186	169	-9.1
General local jurisdiction	39	56	43.6
Total criminal cases	**4,377**	**4,767**	**8.9**
Homicide	51	62	21.6
Assault	71	74	4.2
Robbery and burglary	304	362	19.1
Larceny and theft	324	285	-12.0
Embezzlement and fraud	887	912	2.8
Auto theft	64	60	-6.3
Drug Abuse Prevention and Control Act	1,583	1,505	1.4
Extortion, racketeering and threats	143	158	10.5
Firearms and weapons	189	281	48.7
Forgery and counterfeiting	167	194	16.2
Immigration	114	99	-13.2
All other	480	575	40.6

* Federal prisoner actions.
** State prisoner actions.
Source: Administrative Office of the U.S. Courts, Annual Report, 1982, table 4.

Section II. Empirical data: Findings of a recent DOJ study

The data presented in this section describe the success rate of petitions reviewed, the frequency of filings by habeas corpus petitioners, the time between termination of State case review and initiation of Federal collateral attack, and the potential impact of a statute of limitations restriction on filings. The data are derived primarily from a study funded by the Department of Justice in 1979 (hereinafter referred to as the DOJ study) and from subsequent analyses of the data produced in that study, as described in 13 Rutgers Law Journal 4 (Summer 1982), hereinafter referred to as the Rutgers Law Journal.

The DOJ study reviewed and analyzed all State prisoner habeas corpus actions filed between July 1, 1975, and June 30, 1977, in six Federal district courts and one court of appeals.[5] A total of 1,899 habeas corpus petitions were involved. With minor exceptions, a 100% sample was used in each case.

In considering the data, it should be recognized that the project upon which the DOJ study was based clearly represents only a pilot effort in a complex subject area. The findings, however, are interesting, since no other recent studies have analyzed habeas corpus activity on a multijurisdictional basis.[6]

[5]Eastern District of Pennsylvania, District of New Jersey, Eastern District of Virginia, Northern District of Illinois, Central District of California, Southern District of California, and the Seventh Circuit Court of Appeals. Districts were selected to provide variety in terms of case volume, organizational structure, regional divergence, and demographics (including rural and urban representation).

Table 11. State prisoner petition appeals to U.S. courts of appeals, by circuit, 1982

Circuit	Habeas corpus	Civil rights	Other	Total civil appeals
Total	1,529	2,038	63	18,784
D.C.	5	3	1	796
First	24	37	-	740
Second	227	140	3	1,873
Third	35	205	6	1,509
Fourth	122	700	33	1,978
Fifth	190	84	1	1,972
Sixth	246	192	4	1,912
Seventh	185	150	1	1,526
Eighth	98	89	1	1,129
Ninth	163	244	9	2,630
Tenth	100	105	2	1,221
Eleventh	134	89	2	1,498

Source: Administrative Office of the U.S. Courts, Annual Report, 1982, table B-7.

Table 12. Disposition of State prisoner habeas corpus cases in U.S. courts of appeals, year ending June 1982

	Number of cases
Cases pending July 1, 1981	1,020
Cases commenced	1,529
Cases terminated	1,473
Cases pending June 30, 1982	1,076
Cases disposed of—	
By consolidation	44
Without hearing or submission:	
Total	602
Without judicial action	157
With judicial action	445
After hearing or submission:	
Total	827
Affirmed or granted	632
Dismissed	32
Reversed or denied	142
Other	21

Source: Administrative Office of the U.S. Courts, Annual Report, 1982, table B-1A.

Petitioner success rate

Table 13 describes the success rates for the habeas corpus petitions reviewed in the study. The data show that of the 1,899 total petitions filed, 60 or 3.2% were granted in whole or in part and that 33, or 1.8% of the total petitions filed, resulted in any type of release of the petitioner.[7]

The study indicates, however, that the

[6]A previous study in the area, "Federal Habeas Corpus: A Study in Massachusetts," 87 Harvard Law Review 321 (1973) addressed only Massachusetts data.

[7]DOJ study, p. 7.

Table 13. Federal disposition of State prisoner habeas corpus petitions

	Percent of filings
Petitions filed	100.0%
Petitions granted (whole or in part)	3.2
Prisoner released	1.8
Partial relief or prisoner not released	1.5
Petition denied	84.6
Failure to—	
Exhaust remedies	37.1*
State claim	15.1*
On merits	41.8*
Other**	12.2

Note: Percents based on 1,899 petitions filed between July 1, 1975, and June 30, 1977, in six U.S. district courts (E. Pa., N.J., E. Va., N. Ill., and Central and S. Calif.) and the seventh circuit court of appeals.
* Do not sum to 84.6% because some petitions were denied for more than one reason.
** Includes petitions that were transferred, dismissed with consent, etc.
Source: Robinson, Paul H., An Empirical Study of Habeas Corpus Review of State Court Judgments, table 13 (U.S. Department of Justice Project JADAG-79-C-002).

actual success rate for all petitions submitted may be lower than the percentage shown since blatantly defective petitions were sometimes returned directly to the petitioner, and thus were not included in the "total habeas corpus filings" against which successful petitions were measured. Analysis of the data also shows that the success rate in the district court appears to decrease with successive petitions (e.g., the success rate for State prisoners filing a second Federal habeas corpus petition was 2.1%; in those cases in which two or more Federal petitions had been filed previously, the success rate was 1.6%).[8] The study also found that about 50% of the petitions were denied by the district court on procedural grounds (e.g., failure to exhaust remedies and/or failure to state a claim) and that of those petitions reviewed on the merits, about 93% were denied.

In considering these data, it must be recognized that successful habeas corpus claims, in the majority of cases, result not in the release of the prisoner but rather in a requirement for further judicial review. No data are available that indicate the extent to which such subsequent judicial determinations are more favorable to the petitioner.

Prior litigation by petitioners

The issue of prior appellate and collateral review was specifically addressed in the DOJ study. The data indicate that a substantial component of the habeas corpus workload at both State and Federal levels results from successive filings by the same petitioners.

Specifically, the study reported[9] that more than 30% of State prisoner habeas corpus petitions filed in Federal courts were filed by persons who had filed one or more previous Federal habeas corpus petitions.

The study also found[10] that more than 20% of State prisoner habeas corpus petitioners in Federal courts had filed more than two (and up to 13) habeas corpus petitions in State Court and that more than 44% had previously filed one petition in State court.

The study also reported[11] that more than 81% of the State prisoner habeas corpus petitioners had already had (or were having) direct appellate review at the State level and that 98.6% of the State prisoner habeas corpus cases appealed at the Federal level had previously undergone State appellate review.

The impact of petitioners' persistence as a factor in successive filings was addressed through cross-tabulation of the data described above.[12] The data indicate that, although 20% of those who had filed no prior State habeas actions filed successive Federal habeas corpus petitions, more than 46% of those who had filed two or more petitions at the State level filed successive Federal habeas corpus actions. Correspondingly, the data show[13] that almost a third of the petitioners who had filed two or more Federal habeas corpus actions had also filed successive State habeas corpus actions.

The possibility that successive filings reflect merely the failure to incorporate multiple claims within a single petition is negated by the study, which suggests that the petitions filed by persistent petitioners tend to include more claims than those raised by first-time petitioners.[14] It is interesting to note that the most frequent claim (appearing in 42% of all petitions) was based on allegations of ineffective assistance of counsel.

To further identify the extent to which cases had received prior judicial review, the study analyzed the extent to which the conviction of State prisoners filing for Federal habeas corpus review had resulted from a trial rather than guilty plea. The study found that almost 80% of the State prisoner petitioners in Federal court had been convicted following a trial, thus indicating that habeas corpus petitioners are more likely than average prisoners to have received court review at the trial level.

Use of magistrates

The data presented in Section I described overall caseload levels of habeas corpus petitions reviewed by magistrates. Data obtained in the DOJ study describe the nature of magistrate reviews and the impact of magistrate review on case outcome.

Specifically, the study reports[15] that almost 45% of the total cases filed were referred to a magistrate for review, possible hearing, and preparation of a report and recommendation.

Of these, magistrates recommended that 90% of petitions be denied (56% on grounds of procedural failure), that 2.3% be granted in whole or part, and that the remainder be transferred or dismissed. Where cases were referred to a magistrate, courts adopted their recommendations in the overwhelming majority of cases.

Impact on Federal and State judicial workload

The overall process of Federal review of State prisoner habeas corpus petitions imposes demands on both the Federal and State court systems. Although the DOJ study attempted to identify major workload factors at both Federal and State levels, the study found that data describing the time required for individual activities was not routinely recorded, and that, accordingly, such specific calculations could not be undertaken.

At the Federal level, however, the study indicated that district court time was required in connection with all cases filed; that the processing of habeas corpus petitions may require review of a complete record; and that memoranda and/or opinions were prepared by the district court in almost 40% of all cases.

About 45% of the petitions were referred to a magistrate for case review and preparation of a report and recommendation. Magistrates also drafted court opinions in about 17% of the cases and conducted hearings in about 1% of the cases.[16]

The study showed that about 26% of the cases filed were appealed[17] and requests for certification of probable cause for appeal were considered by the district court in about 40% of the cases in which the petitioner was denied relief. The study noted that some legal argument was heard by the court of appeals in about 25% of all cases appealed and that an opinion or memorandum was prepared in more than 40% of appealed cases in which the petitioner was denied relief.

The study also found that the Federal habeas corpus process imposes demands on the State criminal justice system. State governments were requested to submit records in more than half of all cases filed in district courts. (Compilation of such records involved administrative search and reproduction time and professional review and certification of document authenticity and relevance.) In addition, the State filed factual responses to petitioner allegations in more than 60% of the cases and formal legal briefs in 55% of the cases. State attorneys also appeared for evidentiary hearings (in about 2% of the cases) and in legal arguments (in another 2% of the cases). These costs could be duplicated for each of the cases appealed.

Last, the study observed that fiscal burdens associated with Federal habeas corpus review also included the costs associated with providing appointed counsel for petitioner. This occurred in 8% of all cases.

Time interval before filing

Both the Administration's habeas corpus proposal (S1763, passed by the Senate on February 6, 1984) and the recommendations of the Attorney General's Task Force on Violent Crime include proposals to limit the time period within which petitions for Federal habeas corpus review can be filed by State prisoners. These proposals address the concern that delayed filing potentially results in reliance upon stale evidence and in the inability of the State equitably to retry a prisoner.

The current legislative proposal would establish a 1-year statute of limitations commencing at the time State remedies are exhausted. Recommendation 42 of the Report of the Attorney General's Task Force on Violent Crime proposed a 3-year statute of limitations beginning on the date of final judgment. Both proposals also allow for filings after this period in cases of newly discovered evidence and/or retroactive rights.

The DOJ study was completed before these recommendations were made and, accordingly, specific calculations relevant to these criteria were not made. The study did report, however,[18] that the average interval between State conviction and Federal habeas corpus filing was 2.9 years and that substantial (and largely unexplained) variations appeared to exist among different districts. Additional analysis of the data indicates, however, that although about 50% of all petitions had been filed within 3 years of conviction, only 60% had been filed within 5 years and almost a third of the petitions were filed more than 10 years after conviction.[19]

The study also showed the average time between conviction and exhaustion of remedies to vary between 2.5 and 2.8 years.[20] Based on this estimate, the results of the DOJ study were analyzed[21] to calculate the impact of a filing limitation based on a 1-year interval after exhaustion of remedies. The data indicate that such a limit (which would essentially result in about a 4-year interval after conviction) would preclude the filing of about 43% of the petitions. This percentage does not reflect the fact that petitions could be filed beyond the 4-year period where petitions were based on newly established evidence or retroactive rights. Similarly, the 4-year interval assumes that the period for exhaustion of remedies follows conviction. The cut-off for filing habeas corpus actions challenging confinement and/or parole would of course be later. These two factors indicate that the percentage of State prisoner habeas corpus petitions precluded under such a 1-year statute of limitations would probably be somewhat lower than the initial 43% estimate.

Hearings

The conduct of evidentiary hearings as part of Federal habeas corpus review raises the potential for Federal reinterpretation of matters previously determined by the State court. The DOJ study indicated that some type of hearing is conducted by the district court in about 6% of all cases.[22] Some hearings were also conducted by magistrates. No data were collected comparing Federal and State determinations on issues considered in a hearing procedure.

Appellate review

Although discussions of habeas corpus generally focus on the district court, the data presented in Section I indicate that State prisoner habeas corpus actions also affect activity at the Federal appellate level. The DOJ study produced limited data relevant to the appellate review process.[23] The data indicate, however, that about 26% of all State prisoner habeas corpus cases filed in district court were appealed either by the petitioner or by the State (24.8% by petitioners, 1.4% by the State).[24]

The data also indicate that about 40% of the petitioners denied habeas corpus relief requested a certificate of probable cause from the district court and that, of those requests, about 85% were denied. These figures indicate an area of workload, since denials must be documented and forwarded to the circuit court.[25] The data further show that about 43% of the cases in which the certificate of probable cause was denied by the district court were appealed without certification to the court of appeals. In such cases, the petitioner must request a certificate of probable cause from the court of appeals; it appears, therefore, that in a substantial percentage of cases, probable cause determinations had to be addressed by both the district and appeals courts, thus doubling the legal and administrative costs of this process. The data also indicate that in about 15% of the cases taken to the court of appeals, no certificate of probable cause was requested from the district court. Of the cases involved in the study in which probable cause certification was requested from the court of appeals, the court had granted 6.7% and denied 42.8% before the conclusion of the project. The remaining cases were still pending.

Calculations of time (in months) during which habeas corpus cases were "pending" in district court and the court of appeals were undertaken. The data indicate that an average of 4.6 months passed between filing and court decision in the district court but that more than twice the time (10.4 months on the average) passed between the filing of a notice of appeal and appellate court decisions. Cases ultimately receiving relief in appellate court were pending for a longer period of about 15 months.[26]

The issues relating to habeas corpus reform are complex. Although the data contained in this report illuminate some aspects of the issues involved, other aspects may transcend the limitations of statistical measurement. It is hoped, however, that the data presented here will facilitate the ongoing dialogue on these issues by legal scholars, public representatives, concerned citizens, and the criminal justice community.

Bureau of Justice Statistics Special Reports are prepared principally by BJS staff and edited by Jeffrey L. Sedgwick, deputy director for data analysis. Marilyn Marbrook, head of the publications unit, administers their publication, assisted by Lorraine L. Poston and Joyce M. Stanford. This report was written by Carol G. Kaplan, chief of the Federal statistics and information policy branch of BJS.

NCJ-92948, March 1984

[8] Rutgers Law Journal, p. 711.

[9] DOJ study, p. 15.

[10] DOJ study, p. 15.

[11] DOJ study, p. 15.

[12] Rutgers Law Journal, p. 711.

[13] Rutgers Law Journal, p. 711.

[14] DOJ study, p. 19.

[15] DOJ study, Table 13.

[16] DOJ study, p. 22.

[17] DOJ study, p. 34.

[18] DOJ study, p. 42.

[19] Rutgers Law Journal, p. 704.

[20] The fact that about half of the habeas corpus cases were filed within 3 years of conviction does not necessarily indicate that the average habeas corpus petition was filed soon after exhaustion of State remedies. This is the case since the data show that a substantial percentage of petitioners did not in fact exhaust State remedies prior to filing a Federal habeas corpus petition.

[21] Rutgers Law Journal, p. 705.

[22] DOJ study, p. 22.

[23] Data were obtained in only one appellate circuit; accordingly, some care should be exercised in generalizing from these findings.

[24] DOJ study, p. 34.

[25] Rutgers Law Journal, p. 714.

[26] Rutgers Law Journal, p. 715.

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