

Mr. Chairman and members of the Committee, I would like to thank you for giving this issue your time and attention today. My name is Lisa Cisneros and I am the Executive Director of Coloradans Against the Death Penalty, the only statewide citizens organization in Colorado with the sole mission of helping the public and policy makers recognize that and understand why capital punishment is a flawed public policy.

I want to be clear. We believe in accountability and we are just like all Coloradans in that we want dangerous and violent criminals to be locked away and severely punished. We know that this can be accomplished without the death penalty. We believe that the more one knows about the actual functions of our death penalty system, the less it is possible to support it. We are here today in support of House Bill

1274 Repeal of the Death Penalty and urge you to pass it out of this committee.

Because others who have already come before you or who will follow me are testifying about the many ways Colorado's death penalty structure fails the people of Colorado, I want to instead, highlight for you some of the trends and developments with the death penalty in our country over the last two years and provide you with information about the impact of the death penalty on individual states, including the death penalty's fiscal impact on state budgets. As you will see, the death penalty's unique and cumbersome legal process, its finality, and its resource requirements present many challenges for states which retain the death penalty.

The use of capital punishment is in decline across the United States. Death sentences and executions are down. Several states are reexamining their death penalty laws, including our neighbor to the south, New

Mexico. As you surely know, on March 18th Governor Richardson signed into law New Mexico's death penalty repeal bill. Other states continue to grapple with problems stemming from lingering legal uncertainty over lethal injection and other issues, such as mental illness. New York and New Jersey also recently abandoned capital punishment in favor of life without parole.

These developments appear to be driven by a number of factors, including awareness of mistakes that have sent innocent persons to death rows, questions of whether the death penalty is fairly applied, fiscal concerns about whether it is the best use of law enforcement dollars, and concerns over delays and complications unique to capital punishment. The negative impact of the death penalty process on murder victim family members is also becoming more evident.

Mr. Chairman and members of the committee, I want to refer you to the printed copies of my testimony which you should have before you. There are several more pages, complete with references and footnotes, elaborating on the developments I am raising. I am not going to read it all, but please take a look at what we have to say in those pages. I am quite certain that you will find it compelling.

I want to conclude by saying on behalf of many, many Coloradans, that today you have the opportunity to choose between spending a lot of money for a zero net return, or redirecting the funds our state has been wasting on the death penalty to help Colorado's many families who have lost loved ones in unsolved murders. The families have suffered enough, and they deserve to learn the truth about what happened to their family members. Hopefully, in solving these crimes we will also catch more killers who are still free before they have a chance to kill again. In the end, passage of House Bill 1274 Repeal of the Death

Penalty will make Colorado a safer and more just state.

Thank you. I am happy to take any questions.

Death Penalty Usage - Developments

By just about every measure, the death penalty in the U.S. appears to be on the decline. Executions, which had been on hold due to a lethal injection challenge before the U.S. Supreme Court, resumed in 2008. However, despite the Court's decision, which lifted what was essentially a national moratorium, in most states, executions have been slow to resume. There were 37 executions in 2008, a 14 year low.¹ The vast majority of those executions took place in the South, with **Texas** accounting for almost half.

Meanwhile, stays of executions were frequent as Courts continued to address legal issues involving mental illness and other mitigating factors, adequacy of counsel, lethal injection challenges, and other issues unique to capital punishment.

New death sentences, which have been declining since 2000, continued a downward trend in 2008.² This multi-year decline in death sentencing is seen in every region of the country and even in the states with recent histories of high usage. In **North Carolina**, just one individual was sentenced to death in 2008. To provide a comparison point, in 1996 there were thirty-four death sentences in that state.³ **Texas** has also seen a significant drop in death sentences. Eleven persons were sentenced to death by Texas juries last year, the lowest number since 1976 and since a marked decline in new death sentences began there in 2005.⁴

In the policy arena, two states – **New York** and **New Jersey** - recently abandoned the death penalty, choosing instead life without possibility of parole. Several states created commissions in 2008 to study the death penalty. **Maryland's** commission recommended that the state repeal its death penalty law. In **Tennessee**, a commission recommended a number of reforms to try to

¹ "2008 Decline in U.S. Executions Has States Reflecting on Capital Punishment," Kansas City Star, January 4, 2009

² Ibid.

³ "In N.C., Death Penalty Gets Rarer," News Observer, December 30, 2008

⁴ "Is Texas Changing It's Mind About the Death Penalty?," Time Magazine, December 23 2008

improve the death penalty system, which has been criticized for failing to provide adequate legal representation for condemned inmates who could not afford their own lawyers.⁵

A number of commissions and courts highlighted the death penalty's high cost as a problem area. In **California**, a commission found that it cost the state \$138 million each year to maintain its death penalty system. In **New Mexico**, the state Supreme Court ruled that death sentences couldn't be pursued unless the Legislature provided adequate funding for defense services for indigent defendants in capital cases. **Utah's** Supreme Court also weighed in on the necessity of adequate counsel for defendants facing death. In a unanimous decision, the Utah Justices warned that the state could see death sentences reversed because low salaries have reduced the numbers of attorneys willing and able to take on capital appeals, which are very complex.⁶

The decline in death penalty usage appears to be caused by a number of factors, including awareness on the part of the public that mistakes have been made that have resulted in the sentencing of innocent individuals to death.⁷ Since 1973, 130 individuals in twenty-six states have been exonerated of the crimes for which they were sentenced to die.⁸ A review of these cases reveals a number of factors contributing to exonerations, for example, jailhouse snitches and mistaken eyewitnesses.

Concerns about accuracy in death sentencing may be contributing to what appears to be growing juror reluctance to impose death. Over a six month period from December 2007 to May 2008, **North Carolina** saw three death row inmates exonerated based on new evidence. Problems in the cases included withheld evidence, false testimony, and ineffective assistance of counsel. The media coverage of these exonerations may have influenced jurors, who in 2008 rejected death in twelve of thirteen capital trials.⁹ **California**, which has exonerated three death row inmates, and **Florida**, which has had twenty-two exonerations, are among the states that have experienced the greatest declines in death sentencing over the last decade

Whatever the reasons behind it, the trend of jurors increasingly rejecting death is notable because the law says only those willing to sentence someone to die are

⁵ Associated Press, "Committee offers plan to improve death penalty system," December 9, 2008

⁶ Reversals, which are common in capital cases, do not always reflect the guilt or innocence of the offender. In most cases, they are caused by a serious legal error. The majority of cases reversed on appeal result in a new sentence of something less than death. Reversals directly impact the stakeholders in the justice process, including the families of murder victims, who must endure resulting delays and resentencing.

⁷ 63% of voters surveyed in a May 2006 Gallop poll said they believe that an innocent person has been executed in the past five years

⁸ List maintained by the Death Penalty Information Center, Washington, DC, www.deathpenaltyinfo.org

⁹ "In N.C., Death Penalty Gets Rarer," News Observer, December 30, 2008

qualified to serve on a capital jury. This process, known as "death-qualifying" a jury, has become more costly and challenging as attitudes toward capital punishment have shifted, in turn making it harder for judges to find a jury willing to sit on a death penalty case. With national and state public opinion polls registering drops in support for capital punishment - possibly a result of influential groups such as the U.S. Catholic Conference of Bishops increasing efforts to oppose the death penalty - the task of finding death qualified jurors may become even more difficult in the future.¹⁰

Another possible reason for the decline in the use of the death penalty is that prosecutors appear to be seeking it less often. Tom Horner, president of the **North Carolina** Conference of District Attorneys, attributed decisions not to seek death to frustration over delays caused by lethal injection challenges, which remain unsettled in some states, and also to the time and expense involved in capital cases.¹¹

Prosecutors in **Ohio** are also seeking death less often. An Associated Press survey of Ohio prosecutors found two reasons for this change: the passage of a 2005 law that allows prosecutors to pursue a life without parole sentence without first seeking the death penalty, and the death penalty's cost. The AP estimated the extra county costs involved at the trial level at about \$100,000 per capital trial, no matter how large or small the county or budget.¹²

Impact on States - Financial

The financial costs associated with capital punishment have always been high and this is unlikely to change, even as usage declines.¹³ With the recession, few county prosecutors and other officials responsible for government expenditures can or should ignore its fiscal impact on their budgets, especially as the economy contracts and tough spending choices must be made.

Media reports indicate that some states and counties are struggling to meet court orders that require monies that aren't there. The state of **New Mexico** was forced to drop its pursuit of the death penalty against two defendants because the state legislature did not provide the money necessary for adequate representation of the defendants. In **Louisiana**, the Orleans Parish District Attorney's office may file for bankruptcy because of a 14 million damages award,

¹⁰ The United States Conference of Catholic Bishops Campaign to End Capital Punishment in the United States, with polling at www.ccedp.org

¹¹ "In N.C., Death Penalty Gets Rarer," News Observer, December 30, 2008

¹² "Ohio prosecutors using new life without parole option," Akron Beacon Journal, June 22, 2008

¹³ A March 2007 study by the Urban Institute found that Maryland, a relatively low-usage state, paid at least \$37.2 million for each of the state's five executions since 1978 when the state reenacted the death penalty. The report also found that obtaining a death sentence in Maryland costs approximately \$3 million for each sentence, or \$1.9 million more than the cost of a non-death penalty case.

recently upheld on appeal, stemming from the office's misconduct in a death penalty case that ultimately ended in an exoneration of a man who had spent fourteen years on death row.¹⁴

Fiscal concerns are leading some state leaders to question whether expenditures on the death penalty are the best use of scarce resources. Norm Stamper, a 35-year veteran police officer from San Diego, **California** would rather see funds now spent on the death penalty instead spent on "after-school programs, mental health care, drug and alcohol treatment, education, more crime labs and new technologies, or on hiring more police officers..."¹⁵

Impact on States – Murder Victims Families

For many victims' families, the complex appeals, which are required by the U.S. Supreme Court, and the resulting delays, reversals, and stays of execution, are reason to reject capital punishment in favor of sentences of life in prison. During **New Jersey's** abolition bill hearings, sixty family members who have lost a close relative to murder, including some who had been through the death penalty process, signed onto a letter to the New Jersey Death Penalty Study Commission supporting repeal of the death penalty law. The letter stated, "To be meaningful, justice should be swift and sure. The death penalty is neither."¹⁶

In recent hearings in **Maryland**, Kathy Garcia, a veteran victims' advocate whose nephew was murdered twenty years ago, testified about the impact of the death penalty's cumbersome process on survivors. In addition to the long delays, which she argued are damaging because they prolong the survivors connection to the criminal justice system and thus to the offender, she explained that the death penalty can cause divisions in families that include members with varying views on capital punishment. Noting that her experience included assisting families that have been through the capital process, Garcia said, "I've watched too many families go through this to make me believe the system will ever work."¹⁷

Impact on States – Concern about Fairness

According to the latest Gallup national poll, conducted in October 2008, 54% of Americans believe that the death penalty is applied fairly in this country and 38% think it is applied unfairly. Questions of who gets death have led some states to conduct studies to determine how capital charging decisions are made. Most of

¹⁴ "Orleans Parish DA's Office Faces Bankruptcy," MSNBC.com, January 8, 2009

¹⁵ "Death penalty wastes money, while failing to reduce crime," The Mercury News, Nov. 19, 2007

¹⁶ New Jersey Death Penalty Study Commission transcripts at www.njleg.state.nj.us/legislativepub/pubhearings2006.asp#DPSC

¹⁷ "Murder victims' families say death penalty exacts toll on their lives," Catholic News Service, March 12, 2008

these studies have revealed geographic disparities in the application of the death penalty, and some suggest that the system is also racially skewed.

A 2007 report from the **Maryland** Commission on Capital Punishment, chaired by former U.S. Attorney General Benjamin R. Civiletti, found that death sentences are often tied to the race of the defendant and victim or the location where the murder occurred. For example, among Maryland cases where the death penalty is an option, blacks who kill whites are two and a half times more likely to be sentenced to death than whites who kill whites, and three and a half times more likely than blacks who kill blacks.¹⁸

A 2008 study of the death penalty in **Arkansas** also showed racial patterns in sentencing. The study examined 124 murder cases filed in one district from 1990 to 2005. After adjusting for a variety of factors, researchers found that black people who killed white victims were most likely to be charged with capital murder and sentenced to death. Of the 66 death-eligible cases studied, blacks were defendants in only 38 cases, but nine of the 10 defendants for whom prosecutors sought a death sentence were black. Similarly, whites were victims in only 35 of the cases, but they were the victims in seven of the 10 cases in which the death penalty was sought.¹⁹

Death penalty proponents argue that these kinds of racially disparate outcomes are a result of "geographic disparity," or differences in charging decisions from county to county. Opponents argue that geographic disparity is a problem in and of itself. They further argue that there is evidence that racial bias is a problem even when accounting for geography. Regardless, questions about how the death penalty is applied have received and will likely continue to receive quite a bit of attention in death penalty states.

Summary

The death penalty is in decline across the U.S. Death sentences and executions are down. Several states are reexamining their death penalty laws. Others continue to grapple with problems stemming from lingering legal uncertainty over lethal injection and other issues, such as mental illness. New York, New Jersey and New Mexico recently abandoned capital punishment in favor of life without parole. This retreat appears to be driven by a number of factors, including awareness of mistakes that have sent innocent persons to death rows, questions of whether the death penalty is fairly applied, fiscal concerns about whether it is the best use of law enforcement dollars, and concerns over delays and complications unique to capital punishment.

¹⁸ Final Report, Maryland Commission on Capital Punishment, <http://www.goccp.org/capital-punishment/>

¹⁹ "Study indicates pattern in sentences," Arkansas Democrat-Gazette, September 8, 2008