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A year later, state assesses justice without death penalty

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State Sen. Raymond Lesniak likes to share important moments in life with friends and family through photographs on his holiday greeting cards.

Four years ago, they featured Lesniak in top hat and tails as grand marshal of New York's Pulaski Day parade. Last year, there was a 2-year-old boy with cerebral palsy, the son of a drug addict, who was being adopted by friends.

This year's card captures the image of Gov. Jon Corzine signing the repeal of New Jersey's capital punishment law one year ago this week, a bill Lesniak sponsored. New Jersey became the first state to repeal the death penalty through legislation since the U.S. Supreme Court reinstated capital punishment in 1976.

"It was momentous. I believe it was one of the most significant achievements of my life and I wanted to celebrate it with my friends," said Lesniak (D-Union), who wrote a book about the bill.

A year later, prosecutors and defense lawyers agree the demise of the death penalty has had no discernible impact on the way would-be capital cases are prosecuted in New Jersey.

And while the philosophical debate over the death penalty has not changed, some say a new law that has prison without parole as the most severe penalty is better than a capital punishment law with what seemed like an unending appeals process. Since the state reinstated capital punishment in 1982, there were no executions, even though 60 defendants had been sentenced to death.

"I don't think it's made much of a difference at all other than that some of the cases that were languishing out there are now getting tried," said Richard Pompelio, executive director of the New Jersey Crime Victims Law Center. "The important thing for crime victims is that the process have an end, and with the death penalty there never was an end." *

During the debate over repeal, there was concern that removing the threat of the death penalty would impede prosecutors' ability to negotiate pleas, but that has not materialized, according to prosecutors. Three of 23 capital punishment cases pending at the time of repeal have resulted in guilty pleas. *

"We have not viewed it as an impediment in the disposition of murder cases,"

said Hudson County Prosecutor Edward DeFazio, who served on a state study commission that two years ago recommended repealing the death penalty. "As a practical matter, we have really seen no difference in the way we conduct our business in prosecuting murder cases."

Essex County Prosecutor Paula Dow, head of the state association of county prosecutors, said eliminating the death penalty has not hindered prosecutors in pursuing tough sentences for the most violent offenders.

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"We are still seeing very aggressive sentences," Dow said, citing instances in which judges have imposed life sentences for murder.

A life sentence is 75 years in prison, 85 percent of which must be served without parole. "That's almost the penultimate penalty," she said.

Dow said repealing the death penalty also freed prosecutors from the burden of pursuing death penalty cases in lengthy, expensive trials and prolonged appeals.

"It was a very big drain on the limited resources of law enforcement," she said. "There were long delays in the resolution of the cases, multiple appeals and very high costs associated with the handling of the litigation."

In November 2005, New Jersey Policy Perspective, a liberal think tank based in Trenton, calculated the cost of the death penalty at \$11 million a year for a total of \$253 million during the 23 years it was in place at the time.

Those who opposed the repeal last year still steadfastly defend capital punishment

"There are some crimes that are just so horrendous the only suitable punishment for them is the death penalty," said Assemblyman Samuel Thompson (R-Monmouth).

Assemblyman Richard Merkt (R-Morris) said he is convinced it is just a matter of time before someone sentenced to life in prison without parole is either freed by the courts or has the sentence commuted by a governor.

"It may be years before the full impact is felt, but somewhere down the line you're going to see a particularly horrific, heinous crime and people are going to realize that life in prison is not an appropriate punishment for that," he said.

Of the 23 capital punishment cases pending when the death penalty was repealed, seven have thus far resulted in sentences of life without parole. Four other defendants, including three who pleaded guilty, received sentences such as 50 years, 30 years with no parole, and four consecutive life sentences. Twelve cases are pending.

However, the state Supreme Court is considering whether or not they can get life-without-parole unless jurors consider that sentence in separate

deliberations. That "penalty phase" -- which came after defendants were found guilty -- was required under the death penalty law. If jurors decided a defendant should not be executed, a sentence of 30 years without parole was imposed.

Steven Fortin of Carteret was convicted in November 2007 of strangling a mother of four in Woodbridge in 1994 and was awaiting the death penalty phase of his trial when capital punishment was repealed. The Middlesex County Prosecutor's Office sought life without parole when he was sentenced in February, but the judge ruled -- and an appeals court concurred -- that the sentence could not be imposed because the penalty did not exist when his crime was committed.

Hudson County's DeFazio said he would not pursue sentences of life without parole while the Supreme Court weighs the appeal. He added, however, that "the difference between life without parole and a life sentence is really negligible."

The state judiciary has no statistics on how many times prosecutors have sought life in prison without parole in new murder cases since the death penalty was repealed, according to Tamara Kendig, a spokeswoman for the Administrative Office of the Courts.

The eight men who were on death row when capital punishment was abolished remain at New Jersey State Prison in Trenton, but in other units, according to the Department of Corrections. The former Capital Sentence Unit is being used for other purposes, such as housing inmates who have been segregated from the prison population for disciplinary reasons or for their own protection.

Abolishing the death penalty made New Jersey one of 14 states without capital punishment. Since its reinstatement in 1976, there have been more than 1,100 executions in the United States and today more than 3,000 offenders remain on death row.

No state has followed New Jersey's lead in abolishing capital punishment, though repeal measures in Maryland, New Mexico, Montana and Colorado, have come close, according to Richard Dieter, executive director of the Death Penalty Information Center. He predicted Maryland's repeal would be approved early next year.

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