IN THE SUPREME COURT OF THE STATE OF NEVADA

MAURICE MANUEL SIMS,

Petitioner,

vs.

THE HONORABLE JUDGE DOUGLAS W. HERNDON, EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

Respondent.

Supreme Court Case No.
District Court Case No. C287414-1

APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR WRIT OF PROHIBITION
VOLUME III
(PA 363- PA 626)

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811
PATTI, SGRO, LEWIS & ROGER
720 S. 7th Street, 3rd Floor
Las Vegas, NV 89101
TEL: (702) 385-9595
FAX: (702) 386-2737

IVETTE A. MANINGO, ESQ.
Nevada Bar No.: 7076
LAW OFFICES OF IVETTE A. MANINGO
720 S. 7th Street, 3rd Floor
Las Vegas, NV 89101
TEL: (702) 385-9595
FAX: (702) 386-2737

ATTORNEYS FOR THE PETITIONER

THE HONORABLE JUDGE DOUGLAS W. HERNDON
REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 16TH FLR
LAS VEGAS, NEVADA 89155
TEL: (702) 671-0591
FAX: (702) 671-0598

STEVEN B. WOLFSON
Clark County District Attorney
Attn: Appellate Division
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89101

CATHERINE CORTEZ-MASTO
Attorney General
100 North Carson Street
Carson City, NV 89701-4717

ATTORNEYS FOR THE STATE

Index

Volume I

Volume II

Volume III

EXHIBIT 15

FOR IMMEDIATE RELEASE
January 31, 2000

Governor Ryan Declares Moratorium On Executions, Will Appoint Commission To Review Capital Punishment System

CHICAGO -- Governor George H. Ryan today declared a moratorium on executions of any more Illinois Death Row inmates until a Commission he will appoint to conduct a review of the administration of the death penalty in Illinois can make recommendations to him.

"I now favor a moratorium, because I have grave concerns about our state's shameful record of convicting innocent people and putting them on death row," Governor Ryan said. "And, I believe, many Illinois residents now feel that same deep reservation. I cannot support a system, which, in its administration, has proven to be so fraught with error and has come so close to the ultimate nightmare, the state's taking of innocent life. Thirteen people have been found to have been wrongfully convicted."

Governor Ryan noted that while he still believes the death penalty is a proper societal response for crimes that shock sensibility, he believes Illinois residents are troubled by the persistent problems in the administration of capital punishment in Illinois. Since the death penalty was reinstated in Illinois in 1977, 12 Death Row inmates have been executed while 13 have been exonerated.

"How do you prevent another Anthony Porter -- another innocent man or woman from paying the ultimate penalty for a crime he or she did not commit?" Governor Ryan said referring to the former inmate whose execution was stayed by the Illinois Supreme Court after new evidence emerged clearing him of the capital offense. "Today, I cannot answer that question."

Governor Ryan said he will not approve any more executions until this review of the administration of the death penalty is completed.

"Until I can be sure that everyone sentenced to death in Illinois is truly guilty, until I can be sure with moral certainty that no innocent man or woman is facing a lethal injection, no one will meet that fate," Governor Ryan said. "I am a strong proponent of tough criminal penalties, of supporting laws and programs to help police and prosecutors keep dangerous criminals off the streets. We must ensure the public safety of our citizens but, in doing so, we must ensure that the ends of justice are served."

While noting that the General Assembly, the Illinois Attorney General and the Illinois Supreme Court are all studying the death penalty issue and issuing reports and recommendations, Governor Ryan said more review and debate is critical.

"As Governor, I am ultimately responsible, and although I respect all that these leaders have done and I will consider all that they say, I believe that a public dialogue must begin on the question of the fairness of the application of the death penalty in Illinois," Governor Ryan said.

EXHIBIT 16

AN ACT concerning criminal law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The State Finance Act is amended by adding Section 5.786 as follows:

(30 ILCS 105/5.786 new)

Sec. 5.786. The Death Penalty Abolition Fund.

Section 10. The Code of Criminal Procedure of 1963 is amended by adding Section 119-1 as follows:

(725 ILCS 5/119-1 new)

Sec. 119-1. Death penalty abolished.

(a) Beginning on the effective date of this amendatory Act of the 96th General Assembly, notwithstanding any other law to the contrary, the death penalty is abolished and a sentence to death may not be imposed.

(b) All unobligated and unexpended moneys remaining in the Capital Litigation Trust Fund on the effective date of this amendatory Act of the 96th General Assembly shall be transferred into the Death Penalty Abolition Fund, a special fund in the State treasury, to be expended by the Illinois Criminal Justice Information Authority, for services for

families of victims of homicide or murder and for training of law enforcement personnel.

(725 ILCS 124/Act rep.)

Section 15. The Capital Crimes Litigation Act is repealed.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect July 1, 2011, except that Section 15 takes effect January 1, 2012.

EXHIBIT 17

Substitute Senate Bill No. 280

Public Act No. 12-5

AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 53a-54b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to crimes committed on or after said date*):

A person is guilty of [a capital felony] murder with special circumstances who is convicted of any of the following: (1) Murder of a member of the Division of State Police within the Department of Emergency Services and Public Protection or of any local police department, a chief inspector or inspector in the Division of Criminal Justice, a state marshal who is exercising authority granted under any provision of the general statutes, a judicial marshal in performance of the duties of a judicial marshal, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection under the provisions of section 26-5, an employee of the Department of Correction or a person providing services on behalf of said department when such employee or person is acting within the scope of such employee's or person's employment or duties in a correctional institution or facility and the actor is confined in such institution or facility, or any firefighter, while such victim was acting within the scope of such victim's duties; (2) murder committed by a defendant who is hired to commit the same for pecuniary gain or murder committed by one who is hired by the defendant to commit the same for pecuniary gain; (3) murder committed by one who has previously been convicted of intentional murder or of murder committed in the course of commission of a felony; (4) murder committed by one who was, at the time of commission of the murder, under sentence of life imprisonment; (5) murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person is able to return or be returned to safety; (6) murder committed in the course of the commission of sexual assault in the first degree; (7) murder of two or more persons at the same time or in the course of a single transaction; or (8) murder of a person under sixteen years of age.

Sec. 2. Section 53a-35a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

For any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence and, unless the section of the general statutes that defines the crime specifically provides otherwise, the term shall be fixed by the court as follows: (1) (A) For a capital felony committed prior to the effective date of this section under the provisions of section 53a-54b in effect prior to the effective date of this section, a term of life imprisonment without the possibility of release unless a sentence of death is imposed in accordance with section 53a-46a, as amended by this act, or (B) for the class A felony of murder with special circumstances committed on or after the effective date of this section under the provisions of section 53a-54b in effect on or after the effective date of this section, a term of life imprisonment without the possibility of release; (2) for the class A felony of murder, a term not less than twenty-five years nor more than life; (3) for the class A felony of aggravated sexual assault of a minor under section 53a-70c, a term not less than twenty-five years or more than fifty years; (4) for a class A felony other than an offense specified in subdivision (2) or (3) of this section, a term not less than ten years nor more than twenty-five years; (5) for the class B felony of manslaughter in the first degree with a firearm under section 53a-55a, a term not less than five years nor more than forty years; (6) for a class B felony other than manslaughter in the first degree with a firearm under section 53a-55a, a term not less than one year nor more than twenty years; (7) for a class C felony, a term not less than one year nor more than ten years; (8) for a class D felony, a term not less than one year nor more than five years; and (9) for an unclassified felony, a term in accordance with the sentence specified in the section of the general statutes that defines the crime.

Sec. 3. Section 53a-35b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

A sentence of [imprisonment for life shall mean] life imprisonment means a definite sentence of sixty years, unless the sentence is life imprisonment without the possibility of release, imposed pursuant to [subsection (g) of section 53a-46a] subparagraph (A) or (B) of subdivision (1) of section 53a-35a, as amended by this act, in which case the sentence shall be imprisonment for the remainder of the defendant's natural life.

Sec. 4. Subsection (a) of section 53a-45 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Murder is punishable as a class A felony in accordance with subdivision (2) of section 53a-35a, as amended by this act, unless it is a capital felony committed prior to the effective date of this section, punishable in accordance with subparagraph (A) of subdivision (1) of section 53a-35a, as amended by this act, murder with special circumstances committed on or after the effective date of this section, punishable as a class A felony in accordance with subparagraph (B) of subdivision (1) of section 53a-35a, as amended by this act, or murder under section 53a-54d.

Sec. 5. Subsection (a) of section 53a-46a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A person shall be subjected to the penalty of death for a capital felony committed prior to the effective date of this section under the provisions of section 53a-54b in effect prior to the

effective date of this section only if a hearing is held in accordance with the provisions of this section.

Sec. 6. Subsection (a) of section 53a-46b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Any sentence of death imposed in accordance with the provisions of section 53a-46a, as amended by this act, shall be reviewed by the Supreme Court pursuant to its rules. In addition to its authority to correct errors at trial, the Supreme Court shall either affirm the sentence of death or vacate said sentence and remand for imposition of a sentence in accordance with subparagraph (A) of subdivision (1) of section 53a-35a, as amended by this act.

Sec. 7. Subsection (c) of section 53a-54a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) Murder is punishable as a class A felony in accordance with subdivision (2) of section 53a -35a, as amended by this act, unless it is a capital felony committed prior to the effective date of this section, punishable in accordance with subparagraph (A) of subdivision (1) of section 53a-35a, as amended by this act, murder with special circumstances committed on or after the effective date of this section, punishable as a class A felony in accordance with subparagraph (B) of subdivision (1) of section 53a-35a, as amended by this act, or murder under section 53a-54d.

Sec. 8. Subdivision (2) of subsection (j) of section 10-145b of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(2) When the Commissioner of Education is notified, pursuant to section 10-149a or 17a-101i, that a person holding a certificate, authorization or permit issued by the State Board of Education under the provisions of sections 10-144o to 10-149, inclusive, has been convicted of (A) a capital felony, [pursuant to] under the provisions of section 53a-54b in effect prior to the effective date of this section, (B) arson murder, pursuant to section 53a-54d, (C) a class A felony, (D) a class B felony, except a violation of section 53a-122, 53a-252 or 53a-291, (E) a crime involving an act of child abuse or neglect as described in section 46b-120, or (F) a violation of section 53-21, 53-37a, 53a-60b, 53a-60c, 53a-71, 53a-72a, 53a-72b, 53a-73a, 53a-88, 53a-90a, 53a-99, 53a-103a, 53a-181c, 53a-191, 53a-196, 53a-196c, 53a-216, 53a-217b or 21a-278 or subsection (a) of section 21a-277, any certificate, permit or authorization issued by the State Board of Education and held by such person shall be deemed revoked and the commissioner shall notify such person of such revocation, provided such person may request reconsideration pursuant to regulations adopted by the State Board of Education, in accordance with the provisions of chapter 54. As part of such reconsideration process, the board shall make the initial determination as to whether to uphold or overturn the revocation. The commissioner shall make the final determination as to whether to uphold or overturn the revocation.

Sec. 9. Section 10-145i of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Notwithstanding the provisions of sections 10-144o to 10-146b, inclusive, and 10-149, the State Board of Education shall not issue or reissue any certificate, authorization or permit pursuant to said sections if (1) the applicant for such certificate, authorization or permit has been convicted of any of the following: (A) A capital felony, as defined [in] under the provisions of section 53a-54b in effect prior to the effective date of this section; (B) arson murder, as defined in section 53a-54d; (C) any class A felony; (D) any class B felony except a violation of section 53a-122, 53a-252 or 53a-291; (E) a crime involving an act of child abuse or neglect as described in section 46b-120; or (F) a violation of section 53-21, 53-37a, 53a-60b, 53a-60c, 53a-71, 53a-72a, 53a-72b, 53a-73a, 53a-88, 53a-90a, 53a-99, 53a-103a, 53a-181c, 53a-191, 53a-196, 53a-196c, 53a-216, 53a-217b or 21a-278 or a violation of subsection (a) of section 21a-277, and (2) the applicant completed serving the sentence for such conviction within the five years immediately preceding the date of the application.

Sec. 10. Subsection (a) of section 46b-127 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The court shall automatically transfer from the docket for juvenile matters to the regular criminal docket of the Superior Court the case of any child charged with the commission of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A or B felony or a violation of section 53a-54d, provided such offense was committed after such child attained the age of fourteen years and counsel has been appointed for such child if such child is indigent. Such counsel may appear with the child but shall not be permitted to make any argument or file any motion in opposition to the transfer. The child shall be arraigned in the regular criminal docket of the Superior Court at the next court date following such transfer, provided any proceedings held prior to the finalization of such transfer shall be private and shall be conducted in such parts of the courthouse or the building wherein court is located as shall be separate and apart from the other parts of the court which are then being held for proceedings pertaining to adults charged with crimes. The file of any case so transferred shall remain sealed until the end of the tenth working day following such arraignment unless the state's attorney has filed a motion pursuant to this subsection, in which case such file shall remain sealed until the court makes a decision on the motion. A state's attorney may, not later than ten working days after such arraignment, file a motion to transfer the case of any child charged with the commission of a class B felony or a violation of subdivision (2) of subsection (a) of section 53a-70 to the docket for juvenile matters for proceedings in accordance with the provisions of this chapter. The court sitting for the regular criminal docket shall, after hearing and not later than ten working days after the filing of such motion, decide such motion.

Sec. 11. Subsection (a) of section 46b-133 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Nothing in this part shall be construed as preventing the arrest of a child, with or without a warrant, as may be provided by law, or as preventing the issuance of warrants by judges

in the manner provided by section 54-2a, as amended by this act, except that no child shall be taken into custody on such process except on apprehension in the act, or on speedy information, or in other cases when the use of such process appears imperative. Whenever a child is arrested and charged with a crime, such child may be required to submit to the taking of his photograph, physical description and fingerprints. Notwithstanding the provisions of section 46b-124, the name, photograph and custody status of any child arrested for the commission of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or class A felony may be disclosed to the public.

Sec. 12. Subsection (c) of section 51-36 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) (1) In any case in which a person has been convicted of a felony, other than a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, the official records of evidence or judicial proceedings in the court may be destroyed upon the expiration of twenty years from the date of imposition of the sentence in such case or upon the expiration of the sentence imposed upon such person, whichever is later.

(2) In any case in which a person has been convicted after trial of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, the official records of evidence or judicial proceedings in the court may be destroyed upon the expiration of seventy-five years from the date of imposition of the sentence in such case.

(3) In any case in which a person has been found not guilty, or in any case that has been dismissed or was not prosecuted, the court may order the destruction or disposal of all exhibits entered in such case upon the expiration of ninety days from the date of final disposition of such case, unless a prior disposition of such exhibits has been ordered pursuant to section 54-36a. In any case in which a nolle has been entered, the court may order the destruction or disposal of all exhibits entered in such case upon the expiration of thirteen months from the date of final disposition of such case. Not less than thirty days prior to the scheduled destruction or disposal of exhibits under this subdivision, the clerk of the court shall send notice to all parties and any party may request a hearing on the issue of such destruction or disposal before the court in which the matter is pending.

(4) In any case in which a person has been convicted of a misdemeanor or has been adjudicated a youthful offender, the court may order the destruction or disposal of all exhibits entered in such case upon the expiration of ten years from the date of imposition of the sentence in such case or upon the expiration of the sentence imposed on such person, whichever is later, unless a prior disposition of such exhibits has been ordered pursuant to section 54-36a. Not less than thirty days prior to the scheduled destruction or disposal of exhibits under this subdivision, the clerk of the court shall send notice to all parties and any

party may request a hearing on the issue of such destruction or disposal before the court in which the matter is pending.

(5) In any case in which a person is charged with multiple offenses, no destruction or disposal of exhibits may be ordered under this subsection until the longest applicable retention period under this subsection has expired. The provisions of this subdivision and subdivisions (3), (4) and (6) of this subsection shall apply to any criminal or motor vehicle case disposed of before, on or after October 1, 2006.

(6) The retention period for the official records of evidence and exhibits in any habeas corpus proceeding, petition for a new trial or other proceeding arising out of a criminal case in which a person has been convicted shall be the same as the applicable retention period under this subsection for the criminal case from which such proceeding or petition arose.

(7) For the purposes of this subsection, "sentence" includes any period of incarceration, parole, special parole or probation.

Sec. 13. Subsection (b) of section 51-199 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) The following matters shall be taken directly to the Supreme Court: (1) Any matter brought pursuant to the original jurisdiction of the Supreme Court under section 2 of article sixteen of the amendments to the Constitution; (2) an appeal in any matter where the Superior Court declares invalid a state statute or a provision of the state Constitution; (3) an appeal in any criminal action involving a conviction for a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, class A felony [,] or any other felony, including any persistent offender status, for which the maximum sentence which may be imposed exceeds twenty years; (4) review of a sentence of death pursuant to section 53a-46b, as amended by this act; (5) any election or primary dispute brought to the Supreme Court pursuant to section 9-323 or 9-325; (6) an appeal of any reprimand or censure of a probate judge pursuant to section 45a-65; (7) any matter regarding judicial removal or suspension pursuant to section 51-51j; (8) an appeal of any decision of the Judicial Review Council pursuant to section 51-51r; (9) any matter brought to the Supreme Court pursuant to section 52-265a; (10) writs of error; and (11) any other matter as provided by law.

Sec. 14. Section 51-246 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

In the trial of any [capital case or any case involving imprisonment for life] case involving a crime punishable by death, life imprisonment without the possibility of release or life imprisonment, the court may, in its discretion, require the jury to remain together in the charge of judicial marshals during the trial and until the jury is discharged by the court from further consideration of the case.

Sec. 15. Section 51-286c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The state's attorney for any judicial district may employ one or more detectives to investigate for the purpose of discovering the perpetrators of any crime committed within this state, whenever the penalty for such crime is capital punishment, [or imprisonment in the Connecticut Correctional Institution, Somers] life imprisonment without the possibility of release or life imprisonment. The expenses incurred in the employment of such detectives shall be paid from the State Treasury on an order from the state's attorney employing them.

Sec. 16. Subdivision (1) of subsection (a) of section 52-434 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) Each judge of the Supreme Court, each judge of the Appellate Court, each judge of the Superior Court and each judge of the Court of Common Pleas who ceases or has ceased to hold office because of retirement other than under the provisions of section 51-49 and who is an elector and a resident of this state shall be a state referee for the remainder of such judge's term of office as a judge and shall be eligible for appointment as a state referee during the remainder of such judge's life in the manner prescribed by law for the appointment of a judge of the court of which such judge is a member. The Superior Court may refer any civil, nonjury case or with the written consent of the parties or their attorneys, any civil jury case pending before the court in which the issues have been closed to a judge trial referee who shall have and exercise the powers of the Superior Court in respect to trial, judgment and appeal in the case, and any proceeding resulting from a demand for a trial de novo pursuant to subsection (e) of section 52-549z may be referred without the consent of the parties to a judge trial referee who has been specifically designated to hear such proceedings pursuant to subsection (b) of this section. The Superior Court may, with the consent of the parties or their attorneys, refer any criminal case to a judge trial referee who shall have and exercise the powers of the Superior Court in respect to trial, judgment, sentencing and appeal in the case, except that the Superior Court may, without the consent of the parties or their attorneys, (A) refer any criminal case, other than a criminal jury trial, to a judge trial referee assigned to a geographical area criminal court session, and (B) refer any criminal case, other than a class A or B felony or capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, to a judge trial referee to preside over the jury selection process and any voir dire examination conducted in such case, unless good cause is shown not to refer.

Sec. 17. Subsection (b) of section 53a-25 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Felonies are classified for the purposes of sentence as follows: (1) Class A, (2) class B, (3) class C, (4) class D, (5) unclassified and (6) capital felonies under the provisions of section 53a-54b in effect prior to the effective date of this section.

Sec. 18. Subsection (a) of section 53a-30 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) When imposing sentence of probation or conditional discharge, the court may, as a condition of the sentence, order that the defendant: (1) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip

the defendant for suitable employment; (2) undergo medical or psychiatric treatment and remain in a specified institution, when required for that purpose; (3) support the defendant's dependents and meet other family obligations; (4) make restitution of the fruits of the defendant's offense or make restitution, in an amount the defendant can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance; (5) if a minor, (A) reside with the minor's parents or in a suitable foster home, (B) attend school, and (C) contribute to the minor's own support in any home or foster home; (6) post a bond or other security for the performance of any or all conditions imposed; (7) refrain from violating any criminal law of the United States, this state or any other state; (8) if convicted of a misdemeanor or a felony, other than a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony or a violation of section 21a-278, 21a-278a, 53a-55, 53a-56, 53a-56b, 53a-57, 53a-58 or 53a-70b or any offense for which there is a mandatory minimum sentence which may not be suspended or reduced by the court, and any sentence of imprisonment is suspended, participate in an alternate incarceration program; (9) reside in a residential community center or halfway house approved by the Commissioner of Correction, and contribute to the cost incident to such residence; (10) participate in a program of community service labor in accordance with section 53a-39c; (11) participate in a program of community service in accordance with section 51-181c; (12) if convicted of a violation of subdivision (2) of subsection (a) of section 53-21, section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b, undergo specialized sexual offender treatment; (13) if convicted of a criminal offense against a victim who is a minor, a nonviolent sexual offense or a sexually violent offense, as defined in section 54-250, or of a felony that the court finds was committed for a sexual purpose, as provided in section 54-254, register such person's identifying factors, as defined in section 54-250, with the Commissioner of Emergency Services and Public Protection when required pursuant to section 54-251, 54-252 or 54-253, as the case may be; (14) be subject to electronic monitoring, which may include the use of a global positioning system; (15) if convicted of a violation of section 46a-58, 53-37a, 53a-181j, 53a-181k or 53a-181*l*, participate in an anti-bias crime education program; (16) if convicted of a violation of section 53-247, undergo psychiatric or psychological counseling or participate in an animal cruelty prevention and education program provided such a program exists and is available to the defendant; or (17) satisfy any other conditions reasonably related to the defendant's rehabilitation. The court shall cause a copy of any such order to be delivered to the defendant and to the probation officer, if any.

Sec. 19. Subsection (a) of section 53a-39a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) In all cases where a defendant has been convicted of a misdemeanor or a felony, other than a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony or a violation of section 21a-278, 21a-278a, 53a-55, 53a-56, 53a-56b, 53a-57, 53a-58 or 53a-70b or any other offense for which there is a mandatory minimum sentence which may not be suspended or reduced by the court, after trial or by a plea of guilty without trial, and a term of imprisonment is part of a stated plea agreement or the statutory penalty provides for a term of imprisonment, the court may, in its discretion, order an assessment for placement in an alternate incarceration program under contract

with the Judicial Department. If the Court Support Services Division recommends placement in an alternate incarceration program, it shall also submit to the court a proposed alternate incarceration plan. Upon completion of the assessment, the court shall determine whether such defendant shall be ordered to participate in such program as an alternative to incarceration. If the court determines that the defendant shall participate in such program, the court shall suspend any sentence of imprisonment and shall make participation in the alternate incarceration program a condition of probation as provided in section 53a-30, as amended by this act.

Sec. 20. Subsection (a) of section 53a-40d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A persistent offender of crimes involving assault, stalking, trespass, threatening, harassment, criminal violation of a protective order or criminal violation of a restraining order is a person who (1) stands convicted of assault under section 53a-61, stalking under section 53a-181d, threatening under section 53a-62, harassment under section 53a-183, criminal violation of a protective order under section 53a-223, criminal violation of a restraining order under section 53a-223b or criminal trespass under section 53a-107 or 53a-108, and (2) has, (A) been convicted of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony, a class B felony, except a conviction under section 53a-86 or 53a-122, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216, assault under section 53a-61, stalking under section 53a-181d, threatening under section 53a-62, harassment under section 53a-183, criminal violation of a protective order under section 53a-223, criminal violation of a restraining order under section 53a-223b, or criminal trespass under section 53a-107 or 53a-108, (B) been convicted in any other state of any crime the essential elements of which are substantially the same as any of the crimes enumerated in subparagraph (A) of this subdivision, or (C) been released from incarceration with respect to such conviction.

Sec. 21. Section 53a-46d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

A victim impact statement prepared with the assistance of a victim advocate to be placed in court files in accordance with subdivision (2) of subsection (a) of section 54-220 may be read in court prior to imposition of sentence upon a defendant found guilty of a crime punishable by death or life imprisonment without the possibility of release.

Sec. 22. Subsection (a) of section 53a-182b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A person is guilty of harassment in the first degree when, with the intent to harass, annoy, alarm or terrorize another person, he threatens to kill or physically injure that person or any other person, and communicates such threat by telephone, or by telegraph, mail, computer network, as defined in section 53a-250, or any other form of written communication, in a manner likely to cause annoyance or alarm and has been convicted of a

capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony, a class B felony, except a conviction under section 53a-86 or 53a -122, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216. For the purposes of this section, "convicted" means having a judgment of conviction entered by a court of competent jurisdiction.

Sec. 23. Subsection (a) of section 53a-217d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A person is guilty of criminal possession of body armor when he possesses body armor and has been (1) convicted of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony, except a conviction under section 53a-196a, a class B felony, except a conviction under section 53a-86, 53a-122 or 53a-196b, a class C felony, except a conviction under section 53a-87, 53a-152 or 53a-153 or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216, or (2) convicted as delinquent for the commission of a serious juvenile offense, as defined in section 46b-120.

Sec. 24. Subsection (b) of section 54-2a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) The court, judge or judge trial referee issuing a bench warrant for the arrest of the person or persons complained against shall, in cases punishable by death, life imprisonment without the possibility of release or life imprisonment, set the conditions of release or indicate that the person or persons named in the warrant shall not be entitled to bail and may, in all other cases, set the conditions of release. The conditions of release, if included in the warrant, shall fix the first of the following conditions which the court, judge or judge trial referee finds necessary to assure such person's appearance in court: (1) Written promise to appear; (2) execution of a bond without surety in no greater amount than necessary; or (3) execution of a bond with surety in no greater amount than necessary.

Sec. 25. Subsection (a) of section 54-46a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) No person charged by the state, who has not been indicted by a grand jury prior to May 26, 1983, shall be put to plea or held to trial for any crime punishable by death, life imprisonment without the possibility of release or life imprisonment unless the court at a preliminary hearing determines there is probable cause to believe that the offense charged has been committed and that the accused person has committed it. The accused person may knowingly and voluntarily waive such preliminary hearing to determine probable cause.

Sec. 26. Section 54-82 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) In any criminal case, prosecution or proceeding, the [party] accused may, if [he] the accused so elects when called upon to plead, be tried by the court instead of by the jury; and,

in such case, the court shall have jurisdiction to hear and try such case and render judgment and sentence thereon.

(b) If the accused is charged with a crime punishable by death, [or imprisonment for] life imprisonment without the possibility of release or life imprisonment and elects to be tried by the court, the court shall be composed of three judges to be designated by the Chief Court Administrator, or [his] the Chief Court Administrator's designee, who shall name one such judge to preside over the trial. Such judges, or a majority of them, shall have power to decide all questions of law and fact arising upon the trial and render judgment accordingly.

(c) If the [party] accused does not elect to be tried by the court, [he] the accused shall be tried by a jury of six except that no person [,] charged with an offense which is punishable by death, life imprisonment without the possibility of release or life imprisonment, shall be tried by a jury of less than twelve without [his] such person's consent.

Sec. 27. Section 54-82g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The accused may challenge peremptorily, in any criminal trial before the Superior Court for any offense punishable by death or life imprisonment without the possibility of release, twenty-five jurors; for any offense punishable by [imprisonment for] life imprisonment, fifteen jurors; for any offense the punishment for which may be imprisonment for more than one year and for less than life, six jurors; and for any other offense, three jurors. In any criminal trial in which the accused is charged with more than one count on the information or where there is more than one information, the number of challenges is determined by the count carrying the highest maximum punishment. The state, on the trial of any criminal prosecution, may challenge peremptorily the same number of jurors as the accused.

Sec. 28. Subsection (a) of section 54-82h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) In any criminal prosecution to be tried to the jury in the Superior Court if it appears to the court that the trial is likely to be protracted, the court may, in its discretion, direct that, after a jury has been selected, two or more additional jurors shall be added to the jury panel, to be known as "alternate jurors". Such alternate jurors shall have the same qualifications and be selected and subject to examination and challenge in the same manner and to the same extent as the jurors constituting the regular panel, provided, in any case when the court directs the selection of alternate jurors, the number of peremptory challenges allowed shall be as follows: In any criminal prosecution the state and the accused may each peremptorily challenge thirty jurors if the offense for which the accused is arraigned is punishable by death or life imprisonment without the possibility of release, eighteen jurors if the offense is punishable by life imprisonment, eight jurors if the offense is punishable by imprisonment for more than one year and for less than life, and four jurors in any other case.

Sec. 29. Section 54-83 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

No person may be convicted of any crime punishable by death or life imprisonment without the possibility of release without the testimony of at least two witnesses, or that which is equivalent thereto.

Sec. 30. Subsection (a) of section 54-91a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) No defendant convicted of a crime, other than a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, the punishment for which may include imprisonment for more than one year, may be sentenced, or the defendant's case otherwise disposed of, until a written report of investigation by a probation officer has been presented to and considered by the court, if the defendant is so convicted for the first time in this state; but any court may, in its discretion, order a presentence investigation for a defendant convicted of any crime or offense other than a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section.

Sec. 31. Subsection (b) of section 54-102jj of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Upon the conviction of a person of a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section or the conviction of a person of a crime after trial, or upon order of the court for good cause shown, the state police, all local police departments, any agent of the state police or a local police department and any other person to whom biological evidence has been transferred shall preserve all biological evidence acquired during the course of the investigation of such crime for the term of such person's incarceration.

Sec. 32. Subsection (b) of section 54-125a of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) (1) No person convicted of any of the following offenses, which was committed on or after July 1, 1981, shall be eligible for parole under subsection (a) of this section: (A) Capital felony, as provided [in] under the provisions of section 53a-54b in effect prior to the effective date of this section, (B) murder with special circumstances, as provided under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, (C) felony murder, as provided in section 53a-54c, (D) arson murder, as provided in section 53a-54d, (E) murder, as provided in section 53a-54a, as amended by this act, or (F) aggravated sexual assault in the first degree, as provided in section 53a-70a. (2) A person convicted of (A) a violation of section 53a-100aa or 53a-102, or (B) an offense, other than an offense specified in subdivision (1) of this subsection, where the underlying facts and circumstances of the offense involve the use, attempted use or threatened use of physical force against another person shall be ineligible for parole under subsection (a) of this section

until such person has served not less than eighty-five per cent of the definite sentence imposed less any risk reduction credit earned under the provisions of section 18-98e.

Sec. 33. Subsection (d) of section 54-125d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(d) Notwithstanding any provision of the general statutes, a sentencing court may refer any person convicted of an offense other than a capital felony under the provisions of section 53a -54b in effect prior to the effective date of this section or a class A felony who is an alien to the Board of Pardons and Paroles for deportation under this section.

Sec. 34. Section 54-131b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The Board of Pardons and Paroles may release on medical parole any inmate serving any sentence of imprisonment, except an inmate convicted of a capital felony [as defined in] under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, who has been diagnosed pursuant to section 54-131c as suffering from a terminal condition, disease or syndrome, and is so debilitated or incapacitated by such condition, disease or syndrome as to be physically incapable of presenting a danger to society. Notwithstanding any provision of the general statutes to the contrary, the Board of Pardons and Paroles may release such inmate at any time during the term of [his] such inmate's sentence.

Sec. 35. Subsection (a) of section 54-131k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Board of Pardons and Paroles may grant a compassionate parole release to any inmate serving any sentence of imprisonment, except an inmate convicted of a capital felony [, as defined in] under the provisions of section 53a-54b in effect prior to the effective date of this section or murder with special circumstances under the provisions of section 53a-54b, as amended by this act, in effect on or after the effective date of this section, if it finds that such inmate (1) is so physically or mentally debilitated, incapacitated or infirm as a result of advanced age or as a result of a condition, disease or syndrome that is not terminal as to be physically incapable of presenting a danger to society, and (2) (A) has served not less than one-half of such inmate's definite or aggregate sentence, or (B) has served not less than one-half of such inmate's remaining definite or aggregate sentence after commutation of the original sentence by the Board of Pardons and Paroles.

Sec. 36. Subsection (a) of section 54-193 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There shall be no limitation of time within which a person may be prosecuted for (1) a capital felony under the provisions of section 53a-54b in effect prior to the effective date of this section, a class A felony or a violation of section 53a-54d or 53a-169, (2) a violation of section 53a-165aa or 53a-166 in which such person renders criminal assistance to another

person who has committed an offense set forth in subdivision (1) of this subsection, or (3) a violation of section 53a-156 committed during a proceeding that results in the conviction of another person subsequently determined to be actually innocent of the offense or offenses of which such other person was convicted.

Sec. 37. (NEW) (*Effective from passage*) (a) The Commissioner of Correction shall place an inmate on special circumstances high security status and house the inmate in administrative segregation until a reclassification process is completed under subsection (b) of this section, if (1) the inmate is convicted of the class A felony of murder with special circumstances committed on or after the effective date of this section under the provisions of section 53a-54b of the general statutes, as amended by this act, in effect on or after the effective date of this section, and sentenced to a term of life imprisonment without the possibility of release, or (2) the inmate is in the custody of the Commissioner of Correction for a capital felony committed prior to the effective date of this section under the provisions of section 53a-54b of the general statutes in effect prior to the effective date of this section for which a sentence of death is imposed in accordance with section 53a-46a of the general statutes, as amended by this act, and such inmate's sentence is (A) reduced to a sentence of life imprisonment without the possibility of release by a court of competent jurisdiction, or (B) commuted to a sentence of life imprisonment without the possibility of release.

(b) The commissioner shall establish a reclassification process for the purposes of this section. The reclassification process shall include an assessment of the risk an inmate described in subsection (a) of this section poses to staff and other inmates, and an assessment of whether such risk requires the inmate's placement in administrative segregation or protective custody. If the commissioner places such inmate in administrative segregation pursuant to such assessment, the commissioner shall require the inmate to complete the administrative segregation program operated by the commissioner.

(c) (1) The commissioner shall place such inmate in a housing unit for the maximum security population if, after completion of such reclassification process, the commissioner determines such placement is appropriate, provided the commissioner (A) maintains the inmate on special circumstances high security status, (B) houses the inmate separate from inmates who are not on special circumstances high security status, and (C) imposes conditions of confinement on such inmate which shall include, but not be limited to, conditions that require (i) that the inmate's movements be escorted or monitored, (ii) movement of the inmate to a new cell at least every ninety days, (iii) at least two searches of the inmate's cell each week, (iv) that no contact be permitted during the inmate's social visits, (v) that the inmate be assigned to work assignments that are within the assigned housing unit, and (vi) that the inmate be allowed no more than two hours of recreational activity per day.

(2) The commissioner shall conduct an annual review of such inmate's conditions of confinement within such housing unit and the commissioner may, for compelling correctional management or safety reasons, modify any condition of confinement, subject to the requirements of subparagraphs (A) to (C), inclusive, of subdivision (1) of this subsection.

(d) Not later than January 2, 2013, and annually thereafter, the commissioner shall submit a report to the General Assembly, in accordance with section 11-4a of the general statutes, regarding the number of inmates in such classification as of December first of the year prior to the year in which the report is due, the location of each such inmate, and the specific conditions of confinement imposed on each such inmate pursuant to this section.

Sec. 38. (NEW) (*Effective from passage*) The provisions of subsection (t) of section 1-1 of the general statutes and section 54-194 of the general statutes shall apply and be given full force and effect with respect to a capital felony committed prior to the effective date of this section under the provisions of section 53a-54b of the general statutes in effect prior to the effective date of this section.

Approved April 25, 2012

EXHIBIT 18

The New York Times

April 11, 2012

Death Penalty Repeal Goes to Connecticut Governor

By PETER APPLEBOME

HARTFORD — After more than nine hours of debate, the Connecticut House of Representatives voted on Wednesday to repeal the state's death penalty, following a similar vote in the State Senate last week. Gov. Dannel P. Malloy, a Democrat, has said he will sign the bill, which would make Connecticut the 17th state — the 5th in five years — to abolish capital punishment for future cases.

Mr. Malloy's signature will leave New Hampshire and Pennsylvania as the only states in the Northeast that still have the death penalty. New Jersey repealed it in 2007. New York's statute was ruled unconstitutional by the state's highest court in 2004, and lawmakers have not moved to fix the law.

The vote, after more than two decades of debate and the 2009 veto of a similar bill by the governor at the time, M. Jodi Rell, a Republican, came against the backdrop of one of the state's most horrific crimes: a 2007 home invasion in Cheshire in which Jennifer Hawke-Petit and her daughters, Hayley, 17, and Michaela, 11, were held hostage and murdered, two of the three raped, and their house set afire by two habitual criminals who are now on death row. Ms. Hawke-Petit's husband, Dr. William A. Petit Jr., who was badly beaten but escaped, has since been an ardent advocate for keeping the death penalty.

The bill exempts the 11 men currently on death row, including Joshua Komisarjevsky and Steven J. Hayes, the men convicted of the Petit murders.

The measure was approved by a vote of 86 to 62, largely along party lines.

The legislation will make life in prison without possibility of parole the state's harshest punishment. It mandates that those given life without parole be incarcerated separately from other inmates and be limited to two hours a day outside the prison cell.

In a statement released late Wednesday night, Governor Malloy said the repeal put Connecticut in the same position as nearly every other industrialized nation on the death penalty.

"For decades, we have not had a workable death penalty," he said, noting that only one

person has been executed in Connecticut in the last 52 years. "Going forward, we will have a system that allows us to put these people away for life, in living conditions none of us would want to experience. Let's throw away the key and have them spend the rest of their natural lives in jail."

Thirteen proposed amendments from supporters of capital punishment, most of which would have allowed the death penalty in certain cases, were defeated during the debate, in which many legislators told personal stories of the effects of violent crime. The lawmakers also invoked a wide variety of people, from mass murderers to Immanuel Kant to Sir Thomas More.

State Representative Patricia M. Widlitz, a Democrat from Branford and Guilford, said that like many members, she was torn over her vote. But she recalled a murder in her community and the difficulty residents went through in explaining it to local children. "I just couldn't reconcile telling them that it's O.K. for the government to kill after teaching them that killing is wrong, it's unacceptable, it's immoral," she said.

She added that the killer was sentenced to life without parole. "I think in many ways, that is a death sentence, with no chance of parole, no chance of doing anything with your life," she said.

Republican critics of the bill said the exemption for those currently awaiting execution cast a cloud over the vote, both because it undercut the moral argument of death penalty opponents and because future appeals or government action had the potential to spare the 11 men.

"Let's not mislead the public; let's not mislead ourselves" said the House minority leader, Lawrence Cafero Jr., of Norwalk. "If it is the will of this chamber that this state is no longer in the business of executing people, then let's say it and do it. You cannot have it both ways."

But Democratic legislators — swayed by at least 138 cases nationally in which people sentenced to death were later exonerated and by arguments that the death penalty is imposed in a capricious, discriminatory manner and is not a deterrent to crime — voted for repeal. They noted that a repeal in New Mexico in 2009 that also exempted those already on death row had thus far withstood challenges.

After Connecticut's repeal, 33 states will have capital punishment, along with the United States government when it prosecutes cases in the federal courts. Voters in California will be asked in November whether to abolish the death penalty in that state.

Capital punishment in Connecticut dates to colonial times. From 1639 to 2005, it performed

126 executions, first by hanging, then by the electric chair, and since 1973, by lethal injection. But since 1976, when the Supreme Court allowed the resumption of executions, there has been just one person executed in the state: Michael Bruce Ross, a serial killer who voluntarily gave up his right to further appeals and was put to death in 2005. The last person involuntarily put to death, in 1960, was Joseph (Mad Dog) Taborsky, who committed a string of robberies and killings.

Of the 1,289 executions since 1976 in the United States, 935 were in seven Southern and border states. Texas alone accounts for 481 executions.

In the Connecticut Senate, where passage seemed most in doubt, the bill was approved 20 to 16 on April 5, with 2 Democrats and all 14 Republicans opposed. Democrats have a majority in both chambers of the General Assembly.

Before that vote, Dr. Petit spoke at a news conference where he called for the Senate not to pass the bill. "We believe in the death penalty because we believe it is really the only true just punishment for certain heinous and depraved murders," he said.

The Petit murders were cited by several opponents of the repeal, most vividly by Representative Al Adinolfi, a Republican from Cheshire, Hamden and Wallingford, who said he witnessed the chaos at the Petits' smoldering house that day. He recounted gruesome details of the crime in arguing against the repeal.

"And we say here that Komisarjevsky and Hayes don't deserve the death penalty? Shame on us," he said. "They do deserve the penalty, and so do many others."

But Democrats in favor of the bill cited support from many families of murder victims and the fact that capital punishment has long been banned by nearly all of the world's democracies. In a review of 34 years of Connecticut death penalty cases, Prof. John Donohue of Stanford Law School concluded that "arbitrariness and discrimination are defining features of the state's capital punishment regime."

The political fight over the bill could persist long after the vote. Republicans are likely to put the issue in play in the fall when all 36 State Senate and 151 State House seats are up for election. A recent Quinnipiac University poll found that 62 percent of Connecticut residents thought abolishing the death penalty was "a bad idea," though polls over time have found respondents split relatively evenly if given the option of life without parole as an alternative to executions.

In the final remarks in the debate late Wednesday, the House majority leader, Brendan Sharkey, a Democrat from Hamden, said the death penalty offered a false promise that did

more harm than good.

"I believe that we, as human beings, should not create laws that reciprocate the evil perpetrated against society," Mr. Sharkey said. "Those laws don't protect us."

EXHIBIT 19

In death penalty repeal, reason over revenge at long last

General Assembly's vote to stop executions took informed leadership, courage of conaclance

Left to right: Sylvester and Vicki Schieber, whose daughter Shannon was murdered; Kirk Bloodsworth, who spent several years on death row for a crime he did not commit, and NAACP President Ben Jealous celebrate the passage of SB276, which repeals the death penalty bill in Maryland. (Barbara Haddock Taylor, Baltimore Sun / March 15, 2013)
Dan Rodricks

3:56 p.m. EDT, March 16, 2013

Many of us believe that capital punishment, first used in the Province of Maryland in 1638, should have been relegated to the trash heap long ago. Politicians in Annapolis had overwhelming evidence of its costly and debilitating flaws for many years, but too many refused to attach their names to repeal.

Even in a state where they outnumbered Republicans 2-1, numerous Democrats feared being labeled soft on crime if they voted to end state executions. Indeed, the longtime president of the Senate, a Democrat, offered to personally inject poison into a convicted killer.

That kind of red-meat rhetoric provided the tough-on-crime credits that moderate and middling Democrats nationally were instructed to compile as the party recovered from the Reagan era and the "Willie Horton panic" in 1988. Bill Clinton approved executions while governor of Arkansas. As president, he pushed Congress to expand the federal death penalty to add dozens of categories of felonies, including some crimes that didn't even result in death.

Dan Rodricks

Bio | E-mail | Recent columns

Related

And yet, despite Clinton's cynical political calculus, some Democrats always pushed to get Maryland on the growing list of states that hava abolished this immoral and inefficient practice.

Five years ago, they received considerable help from a commission haaded by former U.S. Attorney General Benjamin R. Civiletti. It concluded that the application of the death penalty in Maryland was "arbitrary and capricious," flawed beyond repair.

The commission looked at the use of the death penalty over three decades and found disturbing racial disparities; killers of white victims were 21/2 times more likely to face the death penalty than killers of African-Americans.

House votes to repeal death penalty

- House roll call

Repealing Maryland's death penalty was long overdue

No to gun control, yes to the death penalty

- How can O'Malley be against the death penalty but for abortion?

See more stories »

The commission, composed of both death-penalty opponents and supporters, found geographic disparities, too: "The fact that similar capital offenses perpetrated by similar offenders are treated so differently depending on where the crimes are committed renders the administration of capital punishment irretrievably inconsistent, nonuniform and therefore unfair."

Baltimore County sent more men to death row than any other locality in the state, and that list included Kirk Bloodsworth, who spent nine years in prison — two on death row — before DNA evidence cleared him in the murder of a child. Baltimore County's insistence on the application of the death penalty prompted the studies that led to the conclusions of jurisdictional bias. And Bloodsworth became the face of the real possibility that the state could execute an innocent man.

Last, the Civiletti commission declared the death penalty a waste of money. By 2008, 62 of 77 death sentences had been reversed in costly post-conviction appeals while many inmates were kept on death row, at $68,000 for each inmate a year. "There are other areas in the Maryland criminal justice system where such resources could be applied and significant results could be expected," the commission said in its final report.

Five years later — and many years after other studies reached similar conclusions — we have repeal of the death penalty. And if it feels a bit anticlimactic, it's because the writing has been on the wall for so long.

Seventeen other states took this step before Maryland did. Thirteen years ago, George Ryan, the Republican governor of Illinois, declared a moratorium on executions because of what he called his state's "shameful record of convicting innocent people and putting them on death row."

According to the Death Penalty Information Center, 142 death row inmates across the country have been exonerated since 1973. That's 142 innocent people not only convicted but sentenced to die.

Perhaps you know all this.

Perhaps you know this, but still believe the state should have the right to decree a human being unfit to live, and that we should be allowed to strap him to a table and inject him with poison.

There are a lot of Marylanders who still feel that way, according to a poll released last week by the Sarah T. Hughes Field Politics Center at Goucher College.

But the Goucher Poll, conducted earlier this month, shows how misinformed Marylanders are about the death penalty and how conflicted many of them are.

When asked to say how many executions Maryland had carried out in the last 10 years, only 15 percent got it right. While just two men have been put to death in the last decade, 30 percent of Marylanders in the Goucher Poll estimated state-sanctioned deaths at between 4 and 10; another 30 percent believe we had killed anywhere from 11 to 100 inmates. Four percent believe we'd killed more than 100.

Majorities said they doubt the death penalty serves as a deterrent to murder and expressed a preference for life in prison over a death sentence. And yet, 51 percent of Marylanders said they believe the state should retain the right to kill. That doesn't make sense.

In the end, it takes informed leadership and the courage of conscience to sort out feelings from facts and to hold rational law and reason above the populist instinct for revenge and the political instinct for self-preservation. We got that from the Maryland General Assembly, at long last.

Popular Stories

Preakness 2013 bikini contest [Pictures]

Will Pericak got biggest signing bonus among Raven...

Kiss rocker Gene Simmons, actress/model wife

Home Depot tells owner of hot dog stands to reloca...

Terps Trio: Big Ten schedule, previously...
Preakness infield party scene [Pictures]
One winning ticket in Florida for $590.5...
Terps have some competition for Antonio ...
Quick retreat from Baltimore for Preakne...
Powerball jackpot ticket sale recalls Ma...

Comments (50)

Add / View comments | Discussion FAQ

George R1 at 9:17 AM March 20, 2013
So I guess the Ted Bundy's of the world should die in prison vs. being executed?
Ironic as a country being founded we hung cattle thieves. Now that's a misdemeanor and a slap on the wrist. However, if you are a Michale Vick type you get 3 years for dog fighting. Really!!
If you get a DUI in Harford County you got to jail.
So now MD in its very finite wisdom repeals the death sentence. Public officials were told 10ish years ago that the system was broken. So instead of fixing it way back when, they now simply repeal it. To add insult to injury the State has now made it more difficult to obtain certain guns.
With DNA and camera's everywhere i would think there is more of an incentive to use the death sentence. OK you want some compromise. Of those on death row who were not caught on tape, or DNA or some other overwhelming evidence you are spared (if you want to call life in jail as spared). However, where DNA or camera catches you doing the dirty deen you get your speedy and if found guilty your executed. If you have a slam dunk take out the middle man of 15-20 years of the appeals process. If you dont like the above, then if you are conviceted of murder of gang members or drug dealers you get no prision term. You are released and the underworld will take care of you via. handgun to your temple. That will save us 65k a year for these thugs.

The Mad Hatter at 9:29 PM March 19, 2013
Hey, gtowanderer, I'm a Liberal, and I'm very much pro-death penalty and pro-a woman's right to choose. Ah, generalities- how they can bite the dim-witted in the butt sometimes! P.S. The Death Penalty may be gone, but in Maryland, abortion will ALWAYS be legal! Ta-tah!

gtowanderer at 12:02 PM March 19, 2013
Once again the left,s hypocrasy is showing,but then again that,s nothing new.
It is puzzling to me,how a group of so called progressives can rail about the death penalty and the so called cruel and unjust nature of it.A lot of them claim that no one has the right to take someone elses life, yet a large amount of them will stand on the corner protesting in the favor of abortion rights. What this tells me is that if one commits a crime in Maryland,no matter how ,heinous or gruesome the act may be he or she is entitled to 3 hots and a cot for the rest of their worthless lives,while the life of the unborn is at the whim of the mother. Boy! that,s what i call justice!!!

EXHIBIT 20

SENATE BILL 276

E2 3lr0146
CF 3lr0147

By: **The President (By Request – Administration) and Senators Gladden, Raskin, Benson, Conway, Currie, Ferguson, Forehand, Frosh, Jones–Rodwell, Kelley, King, Madaleno, Manno, McFadden, Montgomery, Muse, Peters, Pinsky, Pugh, Ramirez, and Rosapepe**

Introduced and read first time: January 18, 2013
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Death Penalty Repeal and Appropriation from Savings to Aid Survivors of Homicide Victims

FOR the purpose of repealing the death penalty; repealing procedures and requirements related to the death penalty; providing that in certain cases in which the State has filed a notice to seek a sentence of death, the notice shall be considered withdrawn and it shall be considered a notice to seek a sentence of life imprisonment without the possibility of parole under certain circumstances; providing that certain persons serving life sentences are not eligible for Patuxent Institution under certain circumstances; altering the circumstance concerning parole for persons serving life sentences when the State sought a certain penalty; requiring the Governor to include in the annual budget submission for certain fiscal years a certain amount for the State Victims of Crime Fund; making conforming and clarifying changes; and generally relating to the repeal of the death penalty.

BY repealing
Article – Correctional Services
Section 3–901 through 3–909 and the subtitle "Subtitle 9. Death Penalty Procedures"
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY repealing
Article – Criminal Procedure
Section 7–201 through 7–204 and the subtitle "Subtitle 2. Proceedings After Death Sentences"; 8–108 and 11–404
Annotated Code of Maryland

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets] indicate matter deleted from existing law.

(2008 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Correctional Services
Section 4–101(e)(2), 4–305(b)(2), 6–112(c), 7–301(d)(2), and 7–601(a)
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–03(d)(1), 3–8A–06(a), 8–404, 8–420, 9–204, and 12–307
Annotated Code of Maryland
(2006 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 3–105(b), 3–106(a), 3–107(a), 4–204(b), 5–101(c), 7–101, 7–103(b), 7–107(b), and 11–916
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY repealing
Article – Criminal Law
Section 2–103(h), 2–202, 2–301, 2–303; and 2–401 and the subtitle "Subtitle 4. Review by Court of Appeals"
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 2–201(b), 2–304(a), 2–305, and 14–101
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 8–505(b)
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 16–812(a)
Annotated Code of Maryland
(2012 Replacement Volume)

Preamble

WHEREAS, The Maryland Commission on Capital Punishment was created by Chapter 431 of the Acts of the General Assembly of 2008 for the purpose of studying all aspects of capital punishment as currently and historically administered in the State; and

WHEREAS, The Commission comprised 23 appointees representing a broad diversity of views on capital punishment, as well as the racial, ethnic, gender, and geographic diversity of the State; and

WHEREAS, The Commission held five public hearings at which testimony from experts and members of the public was presented and discussed, as well as five additional meetings to discuss the evidence presented at the hearings and in the written submissions; and

WHEREAS, The Commission issued its final report to the General Assembly on December 12, 2008, which included the Commission's strong recommendation that, to eliminate racial and jurisdictional bias, reduce unnecessary costs, lessen the misery that capital cases force family members of victims to endure, and eliminate the risk that an innocent person can be convicted, capital punishment be abolished in Maryland; and

WHEREAS, The Commission, in its final report to the General Assembly, recommended that the savings from repealing the death penalty be used to "increase the services and resources already provided to families of victims"; and

WHEREAS, In 1988, the Maryland General Assembly created the State Board of Victim Services in recognition of the unique and distinctive needs of crime victims, and endeavored to ensure that all crime victims in Maryland are treated with dignity, respect, and compassion during all phases of the criminal justice process; and

WHEREAS, In 1991, under the authority of the Governor's Office of Crime Control and Prevention, the Maryland General Assembly created the Maryland Victims of Crime Fund to provide funding support for victim services whose mission is to ensure that all crime victims in Maryland receive justice and are treated with dignity and compassion through comprehensive victim services; and

WHEREAS, Repeal of the death penalty in Maryland will result in savings to the General Fund; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 3–901 through 3–909 and the subtitle "Subtitle 9. Death Penalty Procedures" of Article – Correctional Services of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7–201 through 7–204 and the subtitle "Subtitle 2. Proceedings After Death Sentences"; 8–108 and

11–404 of Article – Criminal Procedure of the Annotated Code of Maryland be repealed.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Correctional Services

4–101.

(e) (2) "Eligible person" does not include an individual who:

(i) is serving two or more sentences of imprisonment for life under § 2–201, **FORMER** § 2–303, or § 2–304 of the Criminal Law Article;

(ii) is serving one or more sentences of imprisonment for life when a court or jury has found under **FORMER** § 2–303 of the Criminal Law Article, beyond a reasonable doubt, that one or more aggravating circumstances existed; or

(iii) has been convicted of murder in the first degree, rape in the first degree, or a sexual offense in the first degree, unless the sentencing judge, at the time of sentencing or in the exercise of the judge's revisory power under the Maryland Rules, recommends that the individual be referred to the Institution for evaluation.

4–305.

(b) (2) An inmate sentenced to life imprisonment as a result of a proceeding under **FORMER** § 2–303 or § 2–304 of the Criminal Law Article is not eligible for parole consideration until the inmate has served 25 years or the equivalent of 25 years when considering allowances for diminution of the inmate's period of confinement as provided under Title 3, Subtitle 7 of this article and § 6–218 of the Criminal Procedure Article.

6–112.

(c) (1) The Division shall complete a presentence investigation report in each case in which **[**the death penalty or**]** imprisonment for life without the possibility of parole is requested under **[**§ 2–202 or**]** § 2–203 of the Criminal Law Article.

(2) The report shall include a victim impact statement as provided under § 11–402 of the Criminal Procedure Article.

(3) The court or jury before which the separate sentencing proceeding is conducted under **[**§ 2–303 or**]** § 2–304 of the Criminal Law Article shall consider the report.

7–301.

(d) (2) An inmate who has been sentenced to life imprisonment as a result of a proceeding under **FORMER** § 2–303 or § 2–304 of the Criminal Law Article is not eligible for parole consideration until the inmate has served 25 years or the equivalent of 25 years considering the allowances for diminution of the inmate's term of confinement under § 6–218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article.

7–601.

(a) On giving the notice required by the Maryland Constitution, the Governor may:

(1) **[**commute or change a sentence of death into a period of confinement that the Governor considers expedient;

(2)**]** pardon an individual convicted of a crime subject to any conditions the Governor requires; or

[(3)**]** **(2)** remit any part of a sentence of imprisonment subject to any conditions the Governor requires, without the remission operating as a full pardon.

Article – Courts and Judicial Proceedings

3–8A–03.

(d) The court does not have jurisdiction over:

(1) A child at least 14 years old alleged to have done an act which, if committed by an adult, would be a crime punishable by **[**death or**]** life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4–202 of the Criminal Procedure Article;

3–8A–06.

(a) The court may waive the exclusive jurisdiction conferred by § 3–8A–03 of this subtitle with respect to a petition alleging delinquency by:

(1) A child who is 15 years old or older; or

(2) A child who has not reached his 15th birthday, but who is charged with committing an act which if committed by an adult, would be punishable by **[**death or**]** life imprisonment.

8–404.

(a) Notwithstanding § 8–103(a) of this title, a trial judge may strike an individual who is party in a civil case while the individual is entitled to a jury trial in the county.

(b) (1) Whenever more individuals than are needed to impanel a jury have been summoned, an individual may be excused but only in accordance with rule or other law.

(2) An individual who is summoned for jury service may be struck from a particular jury only:

(i) In accordance with rule or other law, by a party on peremptory challenge;

(ii) For good cause shown, by a trial judge on a challenge by a party; or

(iii) Subject to paragraph (3) of this subsection, by a trial judge who finds that:

1. The individual may be unable to render impartial jury service;

2. The individual's service likely would disrupt the proceeding; or

3. The individual's service may threaten the secrecy of a proceeding or otherwise affect the integrity of the jury deliberations adversely.

(3) A trial judge may not strike an individual under paragraph (2)(iii)3 of this subsection, unless the judge states on the record:

(i) Each reason for the strike; and

(ii) A finding that the strike is warranted and not inconsistent with §§ 8–102(a) and (b) and 8–104 of this title.

(4) An individual struck under this subsection may serve on another jury for which the basis for the strike is irrelevant.

[(c) (1) A trial judge may strike an individual on the basis of the individual's belief for or against capital punishment only if the judge finds that the belief would prevent or substantially impair the individual from returning an impartial verdict according to law.

(2) An individual struck under this subsection may serve on another jury for which the basis for the strike is irrelevant.**]**

8–420.

(a) (1) This subsection applies only in a criminal trial in which a defendant is subject, on any single count, to**[**:

(i) A death sentence because the State has given notice of intention to seek a death sentence in accordance with § 2–202 of the Criminal Law Article; or

(ii) A**]** **A** sentence of life imprisonment, **[**including a case in which the State has not given notice of intention to seek a death sentence in accordance with § 2–202 of the Criminal Law Article but**]** excluding a common law offense for which no specific statutory penalty is provided.

(2) Each defendant is allowed 20 peremptory challenges.

(3) The State is allowed 10 peremptory challenges for each defendant.

(b) (1) This subsection applies only in a criminal trial in which a defendant is subject, on any single count, to a sentence of at least 20 years, excluding a case subject to subsection (a) of this section or a common law offense for which no specific statutory penalty is provided.

(2) Each defendant is allowed 10 peremptory challenges.

(3) The State is allowed five peremptory challenges for each defendant.

(c) In every other criminal trial, each party is allowed four peremptory challenges.

9–204.

[(a)**]** The court **[**which**]** **THAT** issued an execution on a forfeited recognizance for a witness who failed to appear may discharge the witness from execution upon motion showing good and sufficient cause for the failure.

[(b) This section does not apply in a case if capital punishment may be involved.**]**

12–307.

The Court of Appeals has:

(1) Jurisdiction to review a case or proceeding pending in or decided by the Court of Special Appeals in accordance with Subtitle 2 of this title;

(2) Jurisdiction to review a case or proceeding decided by a circuit court, in accordance with § 12–305 of this subtitle; **AND**

(3) Exclusive appellate jurisdiction with respect to a question of law certified to it under the Uniform Certification of Questions of Law Act**[**; and

(4) Exclusive appellate jurisdiction over a criminal case in which the death penalty is imposed and any appellate proceeding under § 3–904 of the Correctional Services Article**]**.

Article – Criminal Procedure

3–105.

(b) **[**Except in a capital case, on**]** **ON** consideration of the nature of the charge, the court:

(1) may require or allow the examination to be done on an outpatient basis; and

(2) if an outpatient examination is authorized, shall set bail for the defendant or authorize release of the defendant on recognizance.

3–106.

(a) **[**Except in a capital case, if**]** **IF**, after a hearing, the court finds that the defendant is incompetent to stand trial but is not dangerous, as a result of a mental disorder or mental retardation, to self or the person or property of others, the court may set bail for the defendant or authorize release of the defendant on recognizance.

3–107.

(a) Whether or not the defendant is confined and unless the State petitions the court for extraordinary cause to extend the time, the court shall dismiss the charge against a defendant found incompetent to stand trial under this subtitle:

(1) **[**when charged with a capital offense, after the expiration of 10 years;

(2)**]** when charged with a felony or a crime of violence as defined under § 14–101 of the Criminal Law Article, after the lesser of the expiration of 5 years or the maximum sentence for the most serious offense charged; or

[(3)**] (2)** when charged with an offense not covered under paragraph (1) **[**or (2)**]** of this subsection, after the lesser of the expiration of 3 years or the maximum sentence for the most serious offense charged.

4–204.

(b) Except for a sentencing proceeding under **[**§ 2–303 or**]** § 2–304 of the Criminal Law Article:

(1) the distinction between an accessory before the fact and a principal is abrogated; and

(2) an accessory before the fact may be charged, tried, convicted, and sentenced as a principal.

5–101.

(c) A defendant may not be released on personal recognizance if the defendant is charged with:

(1) a crime listed in § 5–202(d) of this title after having been convicted of a crime listed in § 5–202(d) of this title; or

(2) a crime punishable by **[**death or**]** life imprisonment without parole.

7–101.

This title applies to a person convicted in any court in the State who is:

(1) confined under sentence of **[**death or**]** imprisonment; or

(2) on parole or probation.

7–103.

(b) **[**(1)**]** Unless extraordinary cause is shown, **[**in a case in which a sentence of death has not been imposed,**]** a petition under this subtitle may not be filed more than 10 years after the sentence was imposed.

[(2) In a case in which a sentence of death has been imposed, Subtitle 2 of this title governs the time of filing a petition.**]**

7–107.

(b) (1) In a case in which a person challenges the validity of confinement under a sentence of **[**death or**]** imprisonment by seeking the writ of habeas corpus or the writ of coram nobis or by invoking a common law or statutory remedy other than this title, a person may not appeal to the Court of Appeals or the Court of Special Appeals.

(2) This subtitle does not bar an appeal to the Court of Special Appeals:

(i) in a habeas corpus proceeding begun under § 9–110 of this article; or

(ii) in any other proceeding in which a writ of habeas corpus is sought for a purpose other than to challenge the legality of a conviction of a crime or sentence of **[**death or**]** imprisonment for the conviction of the crime, including confinement as a result of a proceeding under Title 4 of the Correctional Services Article.

11–916.

(a) There is a State Victims of Crime Fund.

(b) (1) The Fund shall be used to pay for:

(i) carrying out Article 47 of the Maryland Declaration of Rights;

(ii) carrying out the guidelines for the treatment and assistance for victims and witnesses of crimes and delinquent acts provided in §§ 11–1002 and 11–1003 of this title;

(iii) carrying out any laws enacted to benefit victims and witnesses of crimes and delinquent acts; and

(iv) supporting child advocacy centers established under § 11–923(h) of this subtitle.

(2) The Fund may pay for the administrative costs of the Fund.

(c) The Board shall administer the Fund.

(d) Grants awarded by the Board shall be equitably distributed among all purposes of the Fund described in subsection (b) of this section.

(E) FOR FISCAL YEAR 2015 AND EACH FISCAL YEAR THEREAFTER, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET SUBMISSION $500,000

FOR THE FUND, REDIRECTED FROM GENERAL FUND SAVINGS RESULTING FROM THE REPEAL OF THE DEATH PENALTY.

Article – Criminal Law

2–103.

[(h) The commission of first degree murder of a viable fetus under this section, in conjunction with the commission of another first degree murder arising out of the same incident, does not constitute an aggravating circumstance subjecting a defendant to the death penalty under § 2–303(g)(ix) of this title.**]**

2–201.

(b) (1) A person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to:

(i) **[**death;

(ii)**]** imprisonment for life without the possibility of parole; or

[(iii)**]** **(II)** imprisonment for life.

(2) Unless a **[**sentence of death is imposed in compliance with § 2–202 of this subtitle and Subtitle 3 of this title, or a**]** sentence of imprisonment for life without the possibility of parole is imposed in compliance with § 2–203 of this subtitle and § 2–304 of this title, the sentence shall be imprisonment for life.

[2–202.

(a) A defendant found guilty of murder in the first degree may be sentenced to death only if:

(1) at least 30 days before trial, the State gave written notice to the defendant of:

(i) the State's intention to seek a sentence of death; and

(ii) each aggravating circumstance on which the State intends to rely;

(2) (i) with respect to § 2–303(g) of this title, except for § 2–303(g)(1)(i) and (vii) of this title, the defendant was a principal in the first degree; or

(ii) with respect to § 2–303(g)(1)(i) of this title, a law enforcement officer, as defined in § 2–303(a) of this title, was murdered and the defendant was:

1. a principal in the first degree; or

2. a principal in the second degree who:

A. willfully, deliberately, and with premeditation intended the death of the law enforcement officer;

B. was a major participant in the murder; and

C. was actually present at the time and place of the murder;

(3) the State presents the court or jury with:

(i) biological evidence or DNA evidence that links the defendant to the act of murder;

(ii) a video taped, voluntary interrogation and confession of the defendant to the murder; or

(iii) a video recording that conclusively links the defendant to the murder; and

(4) the sentence of death is imposed in accordance with § 2–303 of this title.

(b) (1) In this subsection, a defendant is "mentally retarded" if:

(i) the defendant had significantly below average intellectual functioning, as shown by an intelligence quotient of 70 or below on an individually administered intelligence quotient test and an impairment in adaptive behavior; and

(ii) the mental retardation was manifested before the age of 22 years.

(2) A defendant may not be sentenced to death, but shall be sentenced to imprisonment for life without the possibility of parole subject to the requirements of § 2–203(1) of this subtitle or imprisonment for life, if the defendant:

(i) was under the age of 18 years at the time of the murder; or

(ii) proves by a preponderance of the evidence that at the time of the murder the defendant was mentally retarded.

(c) A defendant may not be sentenced to death, but shall be sentenced to imprisonment for life without the possibility of parole subject to the requirements of § 2–203(1) of this subtitle or imprisonment for life, if the State relies solely on evidence provided by eyewitnesses.]

[2–301.

(a) The State's Attorney shall file with the Clerk of the Court of Appeals a copy of each:

(1) notice of intent to seek a sentence of death; and

(2) withdrawal of notice of intent to seek a sentence of death.

(b) The failure of a State's Attorney to give timely notice to the Clerk of the Court of Appeals under subsection (a)(1) of this section does not affect the validity of a notice of intent to seek a sentence of death that is served on the defendant in a timely manner.]

[2–303.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Correctional facility" has the meaning stated in § 1–101 of this article.

(ii) "Correctional facility" includes:

1. an institution for the confinement or detention of juveniles charged with or adjudicated as being delinquent; and

2. a hospital in which a person is confined under an order of a court exercising criminal jurisdiction.

(3) (i) "Law enforcement officer" means a law enforcement officer as defined under the Law Enforcement Officers' Bill of Rights, § 3–101 of the Public Safety Article.

(ii) "Law enforcement officer" includes:

1. a law enforcement officer of a jurisdiction outside of the State;

2. an officer serving in a probationary status;

3. a parole and probation officer; and

4. a law enforcement officer while privately employed as a security officer or special police officer under Title 3, Subtitle 3 of the Public Safety Article if the law enforcement officer is wearing the uniform worn while acting in an official capacity or is displaying prominently the officer's official badge or other insignia of office.

(b) If the State gave notice under § 2–202(a)(1) of this title, a separate sentencing proceeding shall be held as soon as practicable after a defendant is found guilty of murder in the first degree to determine whether the defendant shall be sentenced to death.

(c) The sentencing proceeding under subsection (b) of this section shall be conducted:

(1) before the jury that determined the defendant's guilt;

(2) before a jury impaneled for purposes of the proceeding if:

(i) the defendant was convicted based on a guilty plea;

(ii) the defendant was convicted after a trial by a court sitting without a jury;

(iii) the court, for good cause, discharged the jury that convicted the defendant; or

(iv) a court of competent jurisdiction remanded the case for resentencing following a review of the original sentence of death; or

(3) before the court, if the defendant waives a jury sentencing proceeding.

(d) (1) A judge shall appoint at least two alternate jurors when impaneling a jury for any proceeding:

(i) in which the defendant is being tried for a crime for which the death penalty may be imposed; or

(ii) that is held under this section.

(2) The alternate jurors shall be retained throughout the proceedings under any restrictions that the judge imposes.

(3) Subject to paragraph (4) of this subsection, if a juror dies, is disqualified, becomes incapacitated, or is discharged for any other reason before the

jury begins its deliberations on sentencing, an alternate juror becomes a juror in the order selected, and serves in all respects as a juror selected on the regular trial panel.

(4) An alternate juror may not replace a juror who is discharged during the actual deliberations of the jury on the guilt or innocence of the defendant or on sentencing.

(e) (1) The following type of evidence is admissible in a sentencing proceeding:

(i) evidence relating to a mitigating circumstance that is listed under subsection (h) of this section;

(ii) evidence relating to an aggravating circumstance:

1. that is listed under subsection (g) of this section; and

2. of which the State provided notice under § 2–202(a)(1)(ii) of this title;

(iii) evidence of a prior criminal conviction, guilty plea, plea of nolo contendere, or the absence of any prior convictions or pleas, to the same extent that the evidence would be admissible in other sentencing procedures;

(iv) subject to paragraph (2) of this subsection, any presentence investigation report; and

(v) any other evidence the court finds to have probative value and relevance to sentencing, if the defendant has a fair opportunity to rebut any statement.

(2) A recommendation in a presentence investigation report as to a sentence is not admissible in a sentencing proceeding.

(3) The State and the defendant or counsel for the defendant may present argument for or against the sentence of death.

(f) (1) After the evidence is presented to the jury in the sentencing proceeding, the court shall:

(i) give any appropriate instructions allowed by law; and

(ii) instruct the jury as to:

1. the findings that the jury must make to determine whether the defendant shall be sentenced to death, imprisonment for life without the possibility of parole, or imprisonment for life; and

2. the burden of proof applicable to the findings under subsection (g)(2) or (i)(1) and (2) of this section.

(2) The court may not instruct the jury that the jury is to assume that a sentence of life imprisonment is for the natural life of the defendant.

(g) (1) In determining a sentence under subsection (b) of this section, the court or jury first shall consider whether any of the following aggravating circumstances exists beyond a reasonable doubt:

(i) one or more persons committed the murder of a law enforcement officer while the officer was performing the officer's duties;

(ii) the defendant committed the murder while confined in a correctional facility;

(iii) the defendant committed the murder in furtherance of an escape from, an attempt to escape from, or an attempt to evade lawful arrest, custody, or detention by:

1. a guard or officer of a correctional facility; or

2. a law enforcement officer;

(iv) the victim was taken or attempted to be taken in the course of an abduction, kidnapping, or an attempt to abduct or kidnap;

(v) the victim was a child abducted in violation of § 3–503(a)(1) of this article;

(vi) the defendant committed the murder under an agreement or contract for remuneration or promise of remuneration to commit the murder;

(vii) the defendant employed or engaged another to commit the murder and the murder was committed under an agreement or contract for remuneration or promise of remuneration;

(viii) the defendant committed the murder while under a sentence of death or imprisonment for life;

(ix) the defendant committed more than one murder in the first degree arising out of the same incident; or

(x) the defendant committed the murder while committing, or attempting to commit:

1. arson in the first degree;

2. carjacking or armed carjacking;

3. rape in the first degree;

4. robbery under § 3–402 or § 3–403 of this article; or

5. sexual offense in the first degree.

(2) If the court or jury does not find that one or more of the aggravating circumstances exist beyond a reasonable doubt:

(i) it shall state that conclusion in writing; and

(ii) a death sentence may not be imposed.

(h) (1) In this subsection, "crime of violence" means:

(i) abduction;

(ii) arson in the first degree;

(iii) carjacking or armed carjacking;

(iv) escape in the first degree;

(v) kidnapping;

(vi) mayhem;

(vii) murder;

(viii) rape in the first or second degree;

(ix) robbery under § 3–402 or § 3–403 of this article;

(x) sexual offense in the first or second degree;

(xi) manslaughter other than involuntary manslaughter;

(xii) an attempt to commit any crime listed in items (i) through (xi) of this paragraph; or

(xiii) the use of a handgun in the commission of a felony or other crime of violence.

(2) If the court or jury finds beyond a reasonable doubt that one or more of the aggravating circumstances under subsection (g) of this section exists, it then shall consider whether any of the following mitigating circumstances exists based on a preponderance of the evidence:

(i) the defendant previously has not:

1. been found guilty of a crime of violence;

2. entered a guilty plea or a plea of nolo contendere to a charge of a crime of violence; or

3. received probation before judgment for a crime of violence;

(ii) the victim was a participant in the conduct of the defendant or consented to the act that caused the victim's death;

(iii) the defendant acted under substantial duress, domination, or provocation of another, but not so substantial as to constitute a complete defense to the prosecution;

(iv) the murder was committed while the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired due to emotional disturbance, mental disorder, or mental incapacity;

(v) the defendant was of a youthful age at the time of the murder;

(vi) the act of the defendant was not the sole proximate cause of the victim's death;

(vii) it is unlikely that the defendant will engage in further criminal activity that would be a continuing threat to society; or

(viii) any other fact that the court or jury specifically sets forth in writing as a mitigating circumstance in the case.

(i) (1) If the court or jury finds that one or more of the mitigating circumstances under subsection (h) of this section exists, it shall determine by a preponderance of the evidence whether the aggravating circumstances under subsection (g) of this section outweigh the mitigating circumstances.

(2) If the court or jury finds that the aggravating circumstances:

(i) outweigh the mitigating circumstances, a death sentence shall be imposed; or

(ii) do not outweigh the mitigating circumstances, a death sentence may not be imposed.

(3) If the determination is by a jury, a decision to impose a death sentence must be unanimous and shall be signed by the jury foreperson.

(4) A court or jury shall put its determination in writing and shall state specifically:

(i) each aggravating circumstance found;

(ii) each mitigating circumstance found;

(iii) whether any aggravating circumstances found under subsection (g) of this section outweigh the mitigating circumstances found under subsection (h) of this section;

(iv) whether the aggravating circumstances found under subsection (g) of this section do not outweigh the mitigating circumstances found under subsection (h) of this section; and

(v) the sentence determined under subsection (g)(2) of this section or paragraphs (1) and (2) of this subsection.

(j) (1) If a jury determines that a death sentence shall be imposed under the provisions of this section, the court shall impose a death sentence.

(2) If, within a reasonable time, the jury is unable to agree as to whether a death sentence shall be imposed, the court may not impose a death sentence.

(3) If the sentencing proceeding is conducted before a court without a jury, the court shall determine whether a death sentence shall be imposed under the provisions of this section.

(4) If the court or jury determines that a death sentence may not be imposed and the State gave notice under § 2–203(1) of this title, a determination shall be made concerning imprisonment for life without the possibility of parole under § 2–304 of this subtitle.

(5) If the court or jury determines that a death sentence may not be imposed and if the State did not give notice under § 2–203(1) of this title, the court shall impose a sentence of imprisonment for life.

(k) (1) Immediately after the imposition of a death sentence:

(i) the clerk of the court in which sentence is imposed, if different from the court where the indictment or information was filed, shall certify the proceedings to the clerk of the court where the indictment or information was filed; and

(ii) the clerk of the court where the indictment or information was filed shall copy the docket entries in the inmate's case, sign the copies, and deliver them to the Governor.

(2) The docket entries shall show fully the sentence of the court and the date that the sentence was entered.

(l) If the defendant is sentenced to death, the court before which the defendant is tried and convicted shall sentence the defendant to death by intravenous administration of a lethal quantity of an ultrashort–acting barbiturate or other similar drug in combination with a chemical paralytic agent.**]**

2–304.

(a) **[**(1)**]** If the State gave notice under § 2–203(1) of this title, **[**but did not give notice of intent to seek the death penalty under § 2–202(a)(1) of this title,**]** the court shall conduct a separate sentencing proceeding as soon as practicable after the defendant is found guilty of murder in the first degree to determine whether the defendant shall be sentenced to imprisonment for life without the possibility of parole or to imprisonment for life.

[(2) If the State gave notice under both §§ 2–202(a)(1) and 2–203(1) of this title, but the court or jury determines that the death sentence may not be imposed, that court or jury shall determine whether the defendant shall be sentenced to imprisonment for life without the possibility of parole or to imprisonment for life.**]**

2–305.

The Court of Appeals may adopt:

(1) rules of procedure to govern the conduct of sentencing proceedings under **[**§§ 2–303 and 2–304**]** **§ 2–304** of this subtitle; and

(2) forms for a court or jury to use in making written findings and sentence determinations.

[Subtitle 4. Review by Court of Appeals.**]**

[2–401.

(a) (1) After a death sentence is imposed and the judgment becomes final, the Court of Appeals shall review the sentence on the record.

(2) The Court of Appeals shall consolidate an appeal from the verdict with the sentence review.

(b) The clerk of the trial court shall send to the Clerk of the Court of Appeals:

(1) the entire record and the transcript of the sentencing proceeding within 10 days after receiving the transcript;

(2) the determination and written findings of the court or jury; and

(3) a report of the trial court that:

(i) is in the form of a standard questionnaire supplied by the Court of Appeals; and

(ii) includes a recommendation by the trial court as to whether the death sentence is justified.

(c) The defendant and the State may submit briefs and present oral arguments to the Court of Appeals within the time allowed by the Court.

(d) (1) In addition to any error properly before the Court on appeal, the Court of Appeals shall consider the imposition of the death sentence.

(2) With regard to the death sentence, the Court of Appeals shall determine whether:

(i) the imposition of the death sentence was influenced by passion, prejudice, or any other arbitrary factor;

(ii) the evidence supports the finding by the court or jury of a statutory aggravating circumstance under § 2–303(g) of this title; and

(iii) the evidence supports a finding by the court or jury that the aggravating circumstances outweigh the mitigating circumstances under § 2–303(h) and (i)(1) of this title.

(3) In addition to its review under any direct appeal, with regard to the death sentence, the Court of Appeals shall:

(i) affirm the death sentence;

(ii) set the death sentence aside and remand the case for a new sentencing proceeding under § 2–303 of this title; or

(iii) set the death sentence aside and remand the case for modification of the sentence to imprisonment for life.

(e) The Court of Appeals may adopt rules of procedure for the expedited review of death sentences under this section.]

14–101.

(a) In this section, "crime of violence" means:

(1) abduction;

(2) arson in the first degree;

(3) kidnapping;

(4) manslaughter, except involuntary manslaughter;

(5) mayhem;

(6) maiming, as previously proscribed under former Article 27, §§ 385 and 386 of the Code;

(7) murder;

(8) rape;

(9) robbery under § 3–402 or § 3–403 of this article;

(10) carjacking;

(11) armed carjacking;

(12) sexual offense in the first degree;

(13) sexual offense in the second degree;

(14) use of a handgun in the commission of a felony or other crime of violence;

(15) child abuse in the first degree under § 3–601 of this article;

(16) sexual abuse of a minor under § 3–602 of this article if:

(i) the victim is under the age of 13 years and the offender is an adult at the time of the offense; and

(ii) the offense involved:

1. vaginal intercourse, as defined in § 3–301 of this article;

2. a sexual act, as defined in § 3–301 of this article;

3. an act in which a part of the offender's body penetrates, however slightly, into the victim's genital opening or anus; or

4. the intentional touching, not through the clothing, of the victim's or the offender's genital, anal, or other intimate area for sexual arousal, gratification, or abuse;

(17) an attempt to commit any of the crimes described in items (1) through (16) of this subsection;

(18) continuing course of conduct with a child under § 3–315 of this article;

(19) assault in the first degree;

(20) assault with intent to murder;

(21) assault with intent to rape;

(22) assault with intent to rob;

(23) assault with intent to commit a sexual offense in the first degree; and

(24) assault with intent to commit a sexual offense in the second degree.

(b) **[**This section does not apply if a person is sentenced to death.

(c)**]** (1) Except as provided in subsection **[**(g)**]** **(F)** of this section, on conviction for a fourth time of a crime of violence, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence shall be sentenced to life imprisonment without the possibility of parole.

(2) Notwithstanding any other law, the provisions of this subsection are mandatory.

[(d)**] (C)** (1) Except as provided in subsection **[**(g)**] (F)** of this section, on conviction for a third time of a crime of violence, a person shall be sentenced to imprisonment for the term allowed by law but not less than 25 years, if the person:

(i) has been convicted of a crime of violence on two prior separate occasions:

1. in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion; and

2. for which the convictions do not arise from a single incident; and

(ii) has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

(2) The court may not suspend all or part of the mandatory 25–year sentence required under this subsection.

(3) A person sentenced under this subsection is not eligible for parole except in accordance with the provisions of § 4–305 of the Correctional Services Article.

[(e)**] (D)** (1) On conviction for a second time of a crime of violence committed on or after October 1, 1994, a person shall be sentenced to imprisonment for the term allowed by law, but not less than 10 years, if the person:

(i) has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994; and

(ii) served a term of confinement in a correctional facility for that conviction.

(2) The court may not suspend all or part of the mandatory 10–year sentence required under this subsection.

[(f)**] (E)** If the State intends to proceed against a person as a subsequent offender under this section, it shall comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

[(g)**] (F)** (1) A person sentenced under this section may petition for and be granted parole if the person:

(i) is at least 65 years old; and

(ii) has served at least 15 years of the sentence imposed under this section.

(2) The Maryland Parole Commission shall adopt regulations to implement this subsection.

Article – Health – General

8–505.

(b) **[**Except in a capital case, on**]** **ON** consideration of the nature of the charge, the court:

(1) May require or permit an examination to be conducted on an outpatient basis; and

(2) If an outpatient examination is authorized, shall set bail for the defendant or authorize the release of the defendant on personal recognizance.

Article – Transportation

16–812.

(a) The Administration shall disqualify any individual from driving a commercial motor vehicle for a period of 1 year if:

(1) The individual is convicted of committing any of the following offenses while driving a commercial motor vehicle:

(i) A violation of § 21–902 of this article;

(ii) A violation of a federal law or any other state's law which is substantially similar in nature to the provisions in § 21–902 of this article;

(iii) Leaving the scene of an accident which requires disqualification as provided by the United States Secretary of Transportation;

(iv) A crime, other than a crime described in subsection (e) of this section, that is punishable by **[**death or**]** imprisonment for a term exceeding 1 year;

(v) A violation of § 25–112 of this article; or

(vi) A violation of § 2–209, § 2–503, § 2–504, § 2–505, or § 2–506 of the Criminal Law Article**[**.**];**

(2) The individual holds a commercial driver's license and is convicted of committing any of the following offenses while driving a noncommercial motor vehicle:

(i) A violation of § 21–902(a), (c), or (d) of this article;

(ii) A violation of a federal law or any other state's law which is substantially similar in nature to the provisions in § 21–902(a), (c), or (d) of this article;

(iii) Leaving the scene of an accident which requires disqualification as provided by the United States Secretary of Transportation; or

(iv) A crime, other than a crime described in subsection (e) of this section, that is punishable by **[**death or**]** imprisonment for a term exceeding 1 year;

(3) The individual, while driving a commercial motor vehicle or while holding a commercial driver's license, refuses to undergo testing as provided in § 16–205.1 of this title or as is required by any other state's law or by federal law in the enforcement of 49 C.F.R. § 383.51 Table 1, or 49 C.F.R. § 392.5(a)(2);

(4) The individual drives or attempts to drive a commercial motor vehicle while the alcohol concentration of the person's blood or breath is 0.04 or greater; or

(5) The individual drives a commercial motor vehicle when, as a result of prior violations committed while driving a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled or the driver is disqualified from driving a commercial motor vehicle.

SECTION 4. AND BE IT FURTHER ENACTED, That in any case in which the State has properly filed notice that it intended to seek a sentence of death under § 2–202 of the Criminal Law Article in which a sentence has not been imposed, the notice of intention to seek a sentence of death shall be considered to have been withdrawn and it shall be deemed that the State properly filed notice under § 2–203 of the Criminal Law Article to seek a sentence of life imprisonment without the possibility of parole.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

EXHIBIT 21

RESEARCH REPORT

The Cost of the Death Penalty in Maryland

John Roman
Aaron Chalfin
Aaron Sundquist
Carly Knight
Askar Darmenov

March 2008

research for safer communities

URBAN INSTITUTE
Justice Policy Center

This document was prepared under a grant from the Abell Foundation.

URBAN INSTITUTE
Justice Policy Center
2100 M STREET, NW
WASHINGTON, DC 20037
www.urban.org

ACKNOWLEDGEMENTS

We would like to thank the Abell Foundation for funding this research, and Amanda Owens for her patience and guidance during this project.

The authors would like to thank the many individuals who assisted our efforts in collecting, preparing and analyzing the data used in this study. We were fortunate to speak with public defenders, state's attorneys and judges throughout the state who had experience with capital cases. Many of these individuals spent significant time discussing their role in death penalty cases, and their assistance was invaluable.

Dr. Raymond Paternoster at the University of Maryland was kind enough to share the data he collected for his study of racial disparities in death sentencing in Maryland. Margaret Donkerbrook, and John DiCamillo at Grubb & Ellis and the Human Resources Department at Maryland Judiciary provided important cost data.

Students at the University of Baltimore Law School provided research assistance. We would like to thank Alicia Donohue, Alana Henninger, Danielle Jordan, Ashley Leebow, Matthew Lewis, Adam Maarec, Daniel Rubenstein, Robert Shuman-Powell, John Tramazzo and Jana White for their assistance.

At the Urban Institute, Terence Dunworth and Christy Visher provided thoughtful guidance throughout the project. Avinash Bhati provided guidance on econometric issues.

ABSTRACT

Maryland reinstated the death penalty in 1978 as a sentencing option for individuals convicted of felony homicide. Since then, five inmates have been executed and five others are on death row awaiting execution. Much has been written about the morality of the death penalty, and many empirical studies have investigated whether the presence of such a statute deters homicides. However there is limited rigorous empirical research on whether the death penalty increases or decreases the cost of prosecution and incarceration. To address this issue, we initiated a study to assess the death penalty's costs to Maryland taxpayers. We study the lifetime costs of all homicides eligible to receive the death penalty where the homicide occurred between 1978 and 1999.

We found that an average capital-eligible case in which prosecutors did not seek the death penalty will cost Maryland taxpayers more than $1.1 million, including $870,000 in prison costs and $250,000 in costs of adjudication.

A capital-eligible case in which prosecutors unsuccessfully sought the death penalty will cost $1.8 million, $700,000 more than a comparable case in which the death penalty was not sought. Prison costs are about $950,000, and the cost of adjudication is $850,000, more than three times higher than in cases which were not capitally prosecuted.

An average capital-eligible case resulting in a death sentence will cost approximately $3 million, $1.9 million more than a case where the death penalty was not sought. In these cases, prison costs total about $1.3 million while the remaining $1.7 million are associated with adjudication.

Between 1978 and 1999 there were 56 cases resulting in a death sentence, and these cases will cost Maryland citizens $107.3 million over the lifetime of these cases. In addition, the 106 that did not result in a death sentence are projected to cost Maryland taxpayers an additional $71 million. In addition, the Maryland Capital Defender's Division cost $7.2 million. Thus, we forecast that the lifetime costs of capitally-prosecuted cases will cost Maryland taxpayers $186 million.

This study evaluates 1,136 cases were a murder was committed between 1978 and 1999 and the defendant was eligible for the death sentence. Estimates of attorney time spent processing these cases were developed from semi-structured interviews with prosecutors, defense counsel and judges with capital experience. Case events were calculated from data in the Maryland Judiciary Case Search database and the federal PACER database. Costs borne by Maryland taxpayers were estimated for each stage of case processing.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

In 1978, the death penalty was reinstated in Maryland as a sentencing option for a defendant convicted of felony homicide. Between 1978 and September 1999, there were 1,227 homicides where the death penalty was a sentencing option. Of those, 1,136 cases resulted in a guilty verdict in the initial trial or through a plea agreement. In 162 cases, prosecutors filed a "death notice" seeking the death penalty. Fifty-six resulted in a death sentence, although the vast majority of those sentences were ultimately overturned. Since 1978, five people in Maryland have been executed. Five others remain on death row and are awaiting execution. In this study, we estimate the lifetime costs of processing these death eligible cases.

RESEARCH BACKGROUND

Prior research on the costs of capital punishment in other states unambiguously finds that capital cases are more expensive to prosecute than non-capital cases. However, much of the past research relied on limited data and generally studied only a small number of cases. This study tests whether the death penalty resulted in additional costs to Maryland taxpayers and fills a gap in the extant literature by accounting for potentially confounding factors not addressed in prior studies.

A retrospective observational design was used to evaluate this question. Data used in this analysis were developed from several sources. The foundation for the analysis is case data collected by University of Maryland researchers for a 2004 study of disparities in the application of the death penalty in Maryland (Paternoster, Brame, Bacon and Ditchfield 2004). Paternoster and colleagues identified homicides that were eligible to be prosecuted as capital cases in Maryland. His sample includes all cases where the murder occurred between August 1978 and September 1999. From these data, we identified a census of death-eligible, guilty-verdict cases with 1,136 observations, including 162 cases in which a death notice was filed, and 56 death sentences. We estimate the total cost of processing these cases.

In order to estimate the costs of each stage of case processing, we turned to two additional sources. First, we searched administrative databases containing official records on individual case processing, using the Maryland Judiciary Case Search (MDJCS) database and the federal PACER database. All records that matched our sample were coded into our research database. Second, estimates of the time attorneys, judges and support staff spent processing these cases were developed from semi-structured interviews and survey data.

Complete administrative data on case processing were available for 509 of the 1,136 cases. This sample of 509 cases was weighted to resemble the population of 1,136. In addition, a propensity score analysis was conducted to adjust estimates to account for the possibility that capitally

prosecuted cases may have been more egregious, on average, than the typical case that did not receive a death notice. If true, these cases would have been more expensive to prosecute even if no death statute had been in place. Finally, we estimate the cost to Maryland taxpayers associated with each stage of case processing.

We estimated two key costs: 1) those associated with the filing of a death notice; and, 2) those associated with the imposition of a death sentence. We compared the costs for these cases with the cost of processing a capital-eligible case in which no death notice was filed. In this study, the no-death-notice cases represent the cost of processing a felony homicide case in Maryland as if there was no death penalty.

KEY FINDINGS

We find that both the filing of a death notice and the imposition of a death sentence added significantly to the cost of a case. For the average case, a death notice adds $670,000 in costs over the duration of a case. A death sentence adds an additional $1.2 million in processing costs. Thus the average total cost for a single death sentence is about $1.9 million over and above the cost of a similar case with no death penalty sought.

About 70% of the added cost of a death notice case occurs during the trial phase. These additional costs are due to a longer pre-trial period, a longer and more intensive voir dire process, longer trials, more time spent by more attorneys preparing cases, and an expensive penalty phase trial that does not occur at all in non-death penalty cases. In addition, death notice cases are more likely to incur costs during the appellate phase even if there is no death sentence.

TOTAL COSTS PER CASE

- An average capital-eligible case in which the death sentence was not sought costs Maryland taxpayers more than $1.1 million over the life of the case - $870,000 in prison costs and $250,000 in adjudication costs.
- An average capital-eligible case with a death notice costs the taxpayers of Maryland about $1.8 million. In other words, each case with a death notice filing costs $670,000 more than a no-death-notice case. Current and forecasted prison costs are about the same ($950,000 per case), but adjudication costs are more than three times greater ($850,000 per case) than in no-death-notice cases.
- A capital-eligible case that results in a death sentence adds another $1.2 million in costs. The total cost to the taxpayers of Maryland approximately $3 million, more than $1.9 million more per case than a no-death-notice case. Current and forecasted prison costs are higher for death sentence cases ($1.3 million) than no-death-notice cases, and adjudication costs total $1.7 million.

SUMMARY OF TOTAL COSTS TO THE STATE

We find there are substantial costs to the citizens of Maryland associated with the death penalty.

- 56 individuals received a death sentence – at an additional cost to Maryland citizens of $108 million.
- There were an additional 106 cases where a death sentence was sought but not handed down – at an additional cost of $71 million.
- The availability of the death penalty has required the state to operate the Capital Defense Division, with costs more than $7 million for activities not included elsewhere in this study during the period 1978 to 2008.

In sum, we estimate the total cost of the death penalty to Maryland taxpayers for cases that began between 1978 and 1999 to be at least $186 million.

A conservative approach was used to develop these estimates. Thus, this estimate does not include some costs of the death penalty that could not be empirically tested. These include additional pre-trial costs of cases in which a death notice is filed but subsequently waived, the costs of cases tried under a death notice that resulted in a not guilty verdict, and costs of appeals to the United States Supreme Court. If these expenditures could be estimated, they would likely increase the total cost to Maryland taxpayers.

THE COST OF THE DEATH PENALTY IN MARYLAND

STUDY OVERVIEW

This research utilized a retrospective quasi-experimental design to measure the average cost of the death penalty in Maryland. The study makes two comparisons:

(1) the average difference in cost of a capital eligible case in which a *death sentence was sought* by a Maryland state's attorney as compared to the cost of a capital eligible case in which the state's attorney did *not* seek a death sentence; and

(2) the average difference in cost between cases in which *a death sentence was returned* compared to capital eligible cases in which a death sentence was not sought.

The first comparison yields the differential cost of a death notice; the second comparison yields the differential cost of a death sentence. Conceptually, both outcomes are relevant to assessing the costs of capital punishment in Maryland. The presence of a death statute in Maryland means that differential processing of cases begins at the time a decision is made whether or not to pursue a death sentence. Once that decision is made, the processing of cases with a death notice fundamentally changes, and any difference in costs between the two types of cases is a cost associated with the Maryland's capital punishment statute. Once a death sentence is handed down by a Maryland judge or jury, case processing fundamentally changes once again, and cases receiving a death sentence are processed differently than cases not receiving a death sentence. The goal of the study is to determine whether this difference in case processing yields additional costs.

Data were gathered on the 1,227 capital-eligible cases that where a crime that was eligible to receive the death penalty occurred between 1978 and September 1999. We study the lifetime costs associated with these cases, including all costs that had occurred before 2008, and a forecast for all future costs of these cases. Of these cases, an additional 91 cases that resulted in not guilty verdicts were removed, yielding a sample of 1,136 cases[1]. Of these cases, complete administrative data on case processing were available for 509 cases, approximately 45% of all capital-eligible cases yielding guilty verdicts from 1978-1999 and three quarters of all cases with a court event after 1989. All subsequent analyses were conducted on this sub-sample of 509 cases and statistical methods were utilized to ensure that this sub-sample was broadly representative of the original sample of 1,136 cases. Next, costs borne by Maryland taxpayers were estimated for each stage of case processing. Estimates of the time attorneys, judges and support staff spent adjudicating these cases were

[1] A discussion of the decision to delete nolle prosse and not guilty (in the initial trial) cases can be found in the Data section. In sum, we delete those because it would not be appropriate to compare death sentence cases which can not include not guilty or nolle prose to a set of cases that do.

developed from semi-structured interviews and wage data were gathered from administrative data. The cost of prison was estimated by generating a counterfactual year of exit from prison for each offender in our sample from offender and case attributes and adding forecasted prison costs over the remainder of their expected lives to costs already incurred. Finally, all elements of case processing were aggregated, yielding a total lifetime cost for each case.

Multivariate models were utilized to estimate the differential cost of a capital case after holding constant a host of other factors theoretically related to costs. By artificially holding other things equal, this research is able to isolate the impact of a death sentence sought or returned on cost, and rule out the possibility that differences in characteristics of the victim, the defendant and the case and the year and county in which the case was prosecuted contribute to observed cost differentials. Finally, observed cost differentials were multiplied by the number of cases in each condition from 1978-1999 to estimate past, current and future costs to Maryland taxpayers resulting from cases with a crime occurring during this time period. This aggregate total does not include any cases in which the offense occurred after 1999.

PRIOR RESEARCH

There have been at least thirteen prior studies that estimate the costs associated with the death penalty: one federal study, eleven state-level studies and a study of capital punishment in Los Angeles County (Table 1). The studies vary widely in their scope. None of the studies estimate costs for 1) all stages of case processing, 2) the additional costs of a death notice, *and* 3) the additional costs of the death sentence. Despite these limitations, there is a consensus that the presence of capital punishment results in additional costs. Each of the ten studies finds additional costs associated with capital punishment. However, there is substantial variation in these estimates. For instance, five studies estimate the cost of a death sentence compared to a capital eligible case where no death notice is filed. The average additional cost per case among these prior studies is $650,000, but the estimates range from about $100,000 to more than $1.7 million.

Only three studies apply the most rigorous cost estimation approach, 'bottom-up' accounting, which estimates costs at the case level, allowing for the observation of variation in costs within and across cases. That variation can be accounted for in generating average cost estimates. The remaining studies employ an alternative approach, 'top-down' accounting, where all cases are assumed to have identical costs. In addition, many of the studies do not employ a formal sampling strategy where a random (or approximately random) sample of cases is studied and variation across cases is observed. Instead, these studies analyze the costs to justice agencies involved in the death penalty, and divide by the number of death cases processed. Thus they create a 'typical' case and assume that all capital cases are similar. A brief review of these studies follows.[2]

[2] All dollar amounts have been converted into 2007 dollars.

Table 1.

Results of published studies reporting the costs associated with processing capital cases.

	Study Attributes		Cost of Capital-Eligible Cases			Added Cost - Capital Case	
	Type of Study	Stages	Annual	Capital Case	Death Sentence	Death Notice	Death Sentence
New Jersey (2007)	Cost to State	OPD DOC	$1.59 M	--	--	--	--
Washington (2006)	Mixed	T, A, FH	--	--	$198,263 (A, FH)	$480,204 (T)	$103,679
Forsberg, New Jersey (2005)	Top Down	T,PC,A DOC	--	--	$4,460,000	--	--
Tennessee (2004)	Mixed	T, PC, A	--	$74,072 (T, A)	$25,857 (PC only)	--	--
Baicker, 2004 (NH)	Econometric	--			$2,200,000		
Connecticut (2003)	Top Down	T, P	--	--	$428,206	--	$200,170
Kansas (2003)	Bottom Up	T, A	--	--	$1,352,230	--	$946,561
Federal (1998)	Top Down	T	--	$277,446	--	$206,502	--
Erickson, Los Angeles County (1993)	Bottom Up	T	--	--	--	--	$1,721,871
Cook, North Carolina (1993)	Bottom Up	T, PC, A, DOC	$5.74M	--	--	--	$309,937
Maryland (1985)	Top Down	T, P	--	$96,187	--	$67,650*	--
Garey, California, (1985)	Bottom Up, Single Case	T, P, A, PC, SC	--	--	$1,156,182	--	$388,286
NY State Defender's Association (1985)	Mixed	T, P, A, CPR	--	$3,927,895	--	$2.6 M**	--

Source: Urban Institute review of extant studies of the costs of the death penalty. All costs are in 2007 dollars. T= Trial. P=Penalty phase. A= Appellate. PC=Post-Conviction. FH=Federal Habeus. CP= Certiorari Petition Review SC=Supreme Court. OPD=Office of the Public Defender. DOC=Department of Correction. * As compared with guilty pleas. ** Only compared trial cost of capital case to DOC cost for life-sentenced inmate for 40 years.

The first state-level report of the costs of the death penalty was published by the New York State Defenders Association (Capital Losses 1982). Using survey data to estimate costs across the various stages of case processing – the guilt trial, penalty trial, appeals, and Supreme Court review stages – a typical capital case was estimated to cost approximately $3.9 million in 2007 constant dollars. By comparison, NYSDA estimated that the expected alternative - the incarceration of an inmate for forty years – would cost $1.5 million.

Two studies were completed shortly thereafter that estimated the difference in trial costs between a capital and non-capital case. Garey (1985) estimated that a capital trial in California that proceeds through execution cost $1.15 million, almost $400,000 more than a non-capital trial. That same year, the Maryland House Appropriations Committee commissioned a paper that analyzed 32 capitally prosecuted cases. Capital trials were compared with the cost of a guilty plea, and the study reported almost $100,000 in costs of a capital trial, $67,650 more than a guilty pleas. Notably, this was the first study that measured cost for each case in a sample.

Two of the most rigorous studies were published in 1993. Erickson (1993) studied 16 death-eligible cases in Los Angeles County, seven of which had a death notice and nine which did not. The study compared the number of motions filed, court time, and attorney fees. A death sentence was estimated to accrue $1.7 million in additional costs when compared to a homicide case in which no death notice was filed. Duke University economist Philip Cook (Cook et al. 1993) estimated direct costs of the death penalty from cases in six prosecutorial districts in North Carolina. Cook estimated the additional cost of a death sentence at over $300,000, with the annual cost of capital punishment to the state of $5.74 million. Trial costs were highly variable, with the least expensive capital trial costing less than the median non-capital trial. Cook estimated costs of retrials indirectly (from the probability of retrials) and costs associated with the post conviction stage were limited from a sample of two cases alone. However, unlike previous studies, the Cook study accounts for the confounding effects of two key case characteristics, controlling for the defendant's number of prior felonies as well as the indigence of the defendant.

The Judicial Conference of the United States (1998) conducted a budget analysis which was able to identify hours billed into hearing time, trial time, client time, and research time for both the defense and prosecution. They found capital cases billed more than ten times the hours of non-capital cases and that, contrary to other widely cited studies, prosecution costs (including law enforcement) were greater than defense costs. For the trial phase alone, they estimated costs of $277,000 for a death notice, $71,000 for no death notice cases, and $185,460 for cases in which the death notice was filed and then retracted.

A number of studies have estimated the costs of the death penalty by analyzing the costs to justice agencies involved in death penalty cases and then dividing by the number of death cases processed. The State of Connecticut Commission on the Death Penalty (2003) estimated the excess cost of a death sentence versus life in prison at about $430,000 or $200,000 more than life imprisonment. Similarly, New Jersey Policy Perspective (2005) estimated a total cost per death

sentence at $4.46 million (not including execution costs) by aggregating the annual costs of relevant justice system departments. A more recent New Jersey study from the New Jersey Death Penalty Study Commission (2007) estimated that eliminating the death penalty would save the office of the public defender alone $1.59 million. In a similar study, the Washington State Bar Association (2007) analyzed the differential cost of capital and non-capital cases, relying on prosecutors and public defenders' estimates on the extra cost to their organizations of trying a capital case. They estimate an additional cost of $480,300 per trial, and there is substantial variation, with prosecutor estimates ranging from $25,000-$1,000,000.

In 2003 a Kansas report by the Legislative Division of Post Audit estimated costs for a sample of 22 cases and estimated a median cost of a death sentence of $1.32 million, 70% higher than the $750,000 estimated costs for a non-death penalty case. Costs were obtained based on time estimates from judges and attorneys who had participated in each individual case. The study estimated the cost of appeals from prior studies. Unique features of the Kansas death penalty regime affect the generalizability of these estimates, since Kansas does not have a death row, did not give an option of life without possibility of parole at the time of the study, and does not conduct proportionality reviews.

In one of the few studies to sample a large number of cases, the State of Tennessee (2004) sampled 240 capital eligible cases and surveyed attorneys and judges to estimate the differential cost of a capital trial. The study estimated $16,000 in additional costs in the trial phase. The sample was large (53 capital cases, 39 LWOP cases, and 159 life cases), but significant portions of case processing were not included, such as defense attorney costs for life without parole cases, voir dire, and some appellate processing.

Finally, Baicker (2004) conducted an econometric study of the cost of capital cases by examining changes in county budgeting across time and place. Baicker estimated that each death penalty conviction is associated with an increase in county-level judicial and corrections expenditures of more than $2.2 million, and may lead to a shifting of resources away from policing.

Given the limitations of prior research and the substantial state variation in capital case processing, it is difficult to draw firm conclusions about the exact costs of the death penalty from the extant literature. That said, the extant literature consistently finds that capital punishment adds costs to case processing when compared to capital eligible cases where the death penalty is not sought.

Deterrence

None of the studies discussed above directly examined the effect of the death penalty on deterrence, that is, the extent to which the presence of the death penalty causes potential murderers to choose not to kill. Several studies have examined the issue of deterrence with differing results. Perhaps the most conclusive study on the deterrent effect of the death penalty is a recent review of the literature by University of Pennsylvania economists Donohue and Wolfers (2006). They conclude that

variation in homicide rates and small sample sizes make it impossible to detect a deterrent effect, much less to estimate the magnitude of the effect.

Early empirical research on deterrence began with economist Isaac Ehrlich (1975, 414), who concluded that each execution that took place between 1933 and 1969 "may have resulted, on the average, in seven or eight fewer murders." This conclusion has been the subject of intense debate. Passell (1976) conducted a cross-sectional analysis of 40 states for the same time period as Ehrlich, using similar source data (FBI records) and methods (unweighted regressions and cross-sections of similar samples of states for the same time period) and found no evidence of the deterrence effect (Forst 1983).

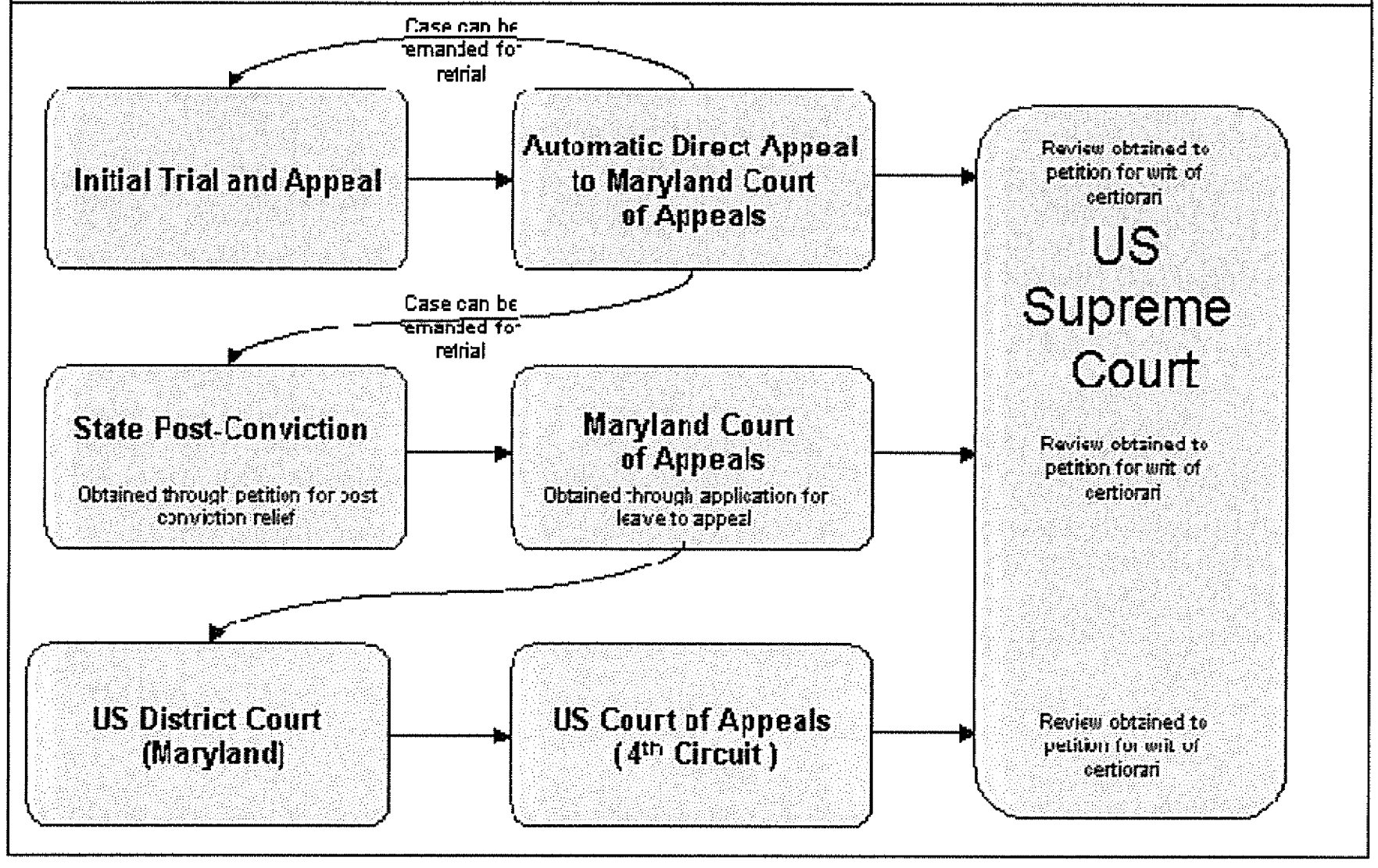
More recently, a number of deterrence studies have employed econometric models to test for a deterrent effects (Mocan and Gittings, 2003; Dezhbakhsh and Shepherd, 2006). Shepherd, an author of many death penalty studies, testified before the United States Congress that "all modern economic studies" had found an effect (Donohue and Wolfers 2006). Recently, Mocan and Gittings (2003) estimated five murders were deterred a year due to the death penalty, but also estimated that each commuted death sentence caused five additional homicides. And Dezhbakhsh and Shepherd (2006) used the Supreme Court's moratorium on executions to test for changes in the homicide rate before and after the moratorium. They found a 16% increase in homicide the year after the moratorium was imposed and an eight percent decrease two years later. A study in the same period by noted economists Katz, Levitt, and Shustorovich found no evidence of a deterrent effect (2003).

Thus, the literature gives no consensus on the effect of the death penalty on deterrence. Given the Donohue and Wolfers finding that research studies are unlikely to correctly estimate a deterrent effect of the death penalty, we do not estimate the effects of deterrence in this study.

PROCESSING OF CAPITAL CASES IN MARYLAND

The adjudication of both death notice and no death notice cases is a complex process. The State's decision to seek a penalty of death introduces additional requirements intended to provide 'super-due process' to a defendant facing a possible death sentence. In general, case processing can be divided into six phases: 1) pre-trial, 2) trial, 3) sentencing, 4) post-conviction, 5) state appeals and 6) federal appeals. The process is shown in **Figure 1**.

Figure 1. Death Penalty Case Processing in Maryland.



Pre-trial

The pre-trial phase includes several initial steps which occur regardless of whether or not a notice of intent to seek a penalty of death is eventually filed. These include arrest, arraignment, preliminary hearing, and selection of a trial date (Bair et al. 1993). The trial date is set within 180 days of the first appearance of the defendant before the circuit court and can be changed only by the county administrative judge with good cause. The notice of intent to seek the death penalty (the death notice) and voir dire (the selection of jurors) also occur during this phase.

Filing a Death Notice

During the pre-trial phase, the State's Attorney in the charging county has full discretion to file a notice of intention to seek a penalty of death as long as the following four conditions are met.

- The State's Attorney must file the notice and all aggravating circumstances on which the State intends to rely at least thirty days prior to the trial;
- The defendant must have been at least 18 years old at the time of the offense;
- The defendant cannot be mentally retarded; and,
- The defendant must be accused of principalship (e.g. the actually killer) in the first degree or of principalship in the second degree. For murder in the second degree, the defendant must also meet the conditions that he or she: 1) intended the premeditated murder of a law enforcement officer, 2)

was a major participant in the murder and 3) was actually present at the time and place of the murder.

Although a case may meet the above conditions, the decision to file a death notice is ultimately at the discretion of the State's Attorney. Furthermore, the State's Attorney has the discretion to unilaterally withdraw the death notice at any point during the trial. The notice to seek a sentence of life without parole (LWOP) must also be filed at least 30 days prior to trial.

Voir Dire

Unless the defendant waives the right to trial by jury, the trial judge decides the size of the initial pool of prospective jurors (the array) and the required number of sworn jurors, including any alternates. Prior to jury selection, each party is provided with biographical briefs of each juror from the initial pool. Jury selection then commences through a process of questioning of prospective jurors by the defense and prosecution known as voir dire. In cases where the prosecution has filed a death notice, or where life without parole is a sentencing option, the defense is permitted twenty strikes against prospective jurors and the prosecution is permitted ten. The judge may also dismiss an unlimited number of jurors. In death noticed cases, voir dire includes a process of "death qualification" – no juror may serve on a death penalty trial unless he or she is willing to impose the death penalty. [3] Through the process of voir dire, a twelve-person jury is impaneled in capital cases with at least two alternate jurors (Bair et al. 1993).

Guilt/Innocence Trial

The guilt/innocence phase is identical in structure for both death notice and no death notice cases (although the resources dedicated to the process may differ). Extant research suggests that death notice cases are more complex. Hypotheses about the extra processing of death notice cases include longer trials, more expert witnesses, more motions, hearings and deliberations. In short, they consume greater resources (Bair et al. 1993). American Bar Association (ABA) guidelines require the use of greater resources in several ways, including representation of indigent defendants by two attorneys in capital trials, as compared to a single defense attorney in no death notice trials (American Bar Association 2003, 28).

Penalty Trial and Sentencing

If a guilty verdict is issued for a death notice case, a second trial commences to determine whether or not a death sentence will be handed down. Typically, the same judge and jury adjudicate both trials in capital cases. In the bifurcated model of capital cases, this second trial is termed the penalty phase – there is no analogous phase of processing in no death notice cases. Instead, the presiding judge sentences the defendant during a separate sentencing hearing following a verdict.

---

[3] Thus, those who would always vote for a death sentence and those who would never vote for a death sentence are not eligible for a capital jury. This extra step in determining eligibility adds additional time and complexity to voir dire in death penalty cases.

During the penalty trial for a capital case, in order to impose a death sentence, the judge or jury must unanimously determine whether the case's aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. Maryland law provides for the following ten aggravating circumstances:

1) one or more persons committed the murder of a law enforcement officer while the officer was performing the officer's duties;

2) the defendant committed the murder while confined in a correctional facility;

3) the defendant committed the murder in furtherance of an escape from, an attempt to escape from, or an attempt to evade lawful arrest, custody or detention by:
a. a guard or office of a correctional facility; or
b. a law enforcement officer

4) the victim was taken or attempted to be taken in the course of an abduction, kidnapping, or an attempt to abduct or kidnap;

5) the victim was a child abducted in violation of § 3-503(a)(1);

6) the defendant committed the murder under an agreement or contract for remuneration or promise of remuneration to commit the murder;

7) the defendant employed or engaged another to commit the murder and the murder was committed under an agreement or contract for remuneration or promise of remuneration;

8) the defendant committed murder while under a sentence of death or imprisonment for life;

9) the defendant committed more than one murder in the first degree arising out of the same incident; or

10) the defendant committed the murder while committing, or attempting to commit:
a. arson in the first degree;
b. carjacking or armed carjacking;
c. rape in the first degree;
d. robbery; or
e. sexual offense in the first degree.

Similarly, the Maryland law provides for the following eight mitigating circumstances:

1) the defendant previously has not:
a. been found guilty of a crime of violence;
b. entered a guilty plea or a plea of *nolo contendere* to a charge of a crime of violence; or
c. received probation before judgment

2) the victim was a participant in the conduct of the defendant or consented to the act that caused the victim's death;

3) the defendant acted under substantial duress, domination, or provocation of another, but not so substantial as to constitute a complete defense to the prosecution;

4) the murder was committed while the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired due to emotional disturbance, mental disorder, or mental incapacity;

5) the defendant was of a youthful age at the time of the murder;

6) the act of the defendant was not the sole proximate cause of the victim's death;

7) it is unlikely that the defendant will engage in further criminal activity that would be a continuing threat to society; or

8) any other fact that the court or jury specifically sets forth in writing as a mitigating circumstance in the case.

The decision as to whether the aggravators outweigh the mitigators belongs to the jury. The jury may, for example, find that a single aggravating circumstance—the allegation that the murder took place while the defendant was attempting to commit another crime— outweighs the mitigating circumstances—youthful age at the time of the murder and an absence of violent criminal history—and, accordingly, impose the death penalty.

State Post-Conviction Review in Trial Court

The post-conviction review procedure allows a defendant to raise specific challenges in court that may not have been heard on appeal.[4] Most often, those challenges involve issues which fall outside the trial record, including the ineffectiveness of counsel or withholding of evidence by the state. The defendant may also raise claims based on new case law or on claims that the defendant unknowingly waived fundamental rights. Because the nature of these claims often involves re-opening parts of the case, the defendant may seek to prove prior counsel failed to present exculpatory evidence. Thus, preparation for post-conviction review may result in significant costs, particularly to the new defense.

All defendants have a statutory right to counsel on their first petition.[5] In subsequent post-conviction reviews for death sentence cases counsel is also provided. Counsel is rarely provided for additional post-conviction reviews for cases with other sentences. In Maryland, a capital defendant is typically represented by a private attorney who is reimbursed by the state. The prosecuting attorney and the attorney general represent the State at this stage. Prior to 1994, the deadline for filing a petition for post-conviction relief was 340 days prior to 1994 and the deadline was reduced to 210 days thereafter. Once a decision is rendered, a defendant seeking to appeal must file for a leave to appeal with the Court of Appeals.

Before 1995, a capital or non-capital defendant had the right to file a second post conviction petition. Under current law, however, a second post conviction petition can be only be filed if reopening the case is in the 'interest of justice.' The right to a hearing is only guaranteed for the first post-conviction review. In practice, defendants in death sentence cases often proceed through multiple post-sentencing reviews.

Direct Review in Maryland Court of Appeals

After a guilty verdict and sentencing, the defendant progresses through multiple stages of post-sentencing case review. Defendants in cases with a sentence other than death first appeal to the

---

[4] Maryland Uniform Post Conviction Procedure Act.

[5] Section 645A (A) of Article 27.

Maryland Court of Special Appeals. If the conviction is upheld by the Court of Special Appeals, the defendant may then appeal to the Maryland Court of Appeals. Cases with a death sentence are appealed directly to the Court of Appeals[6]. Thus, non-death cases may proceed through an additional stage of processing and occur additional costs. In addition to appeals by a defendant, the State may appeal court rulings, for instance, to contest a ruling over-turning the defendant's death sentence.

In Maryland, a defendant sentenced to death is granted an automatic appeal regardless of whether a notice of appeal is filed. This notice is typically filed within ten days of sentencing. Once the transcript of the trial is received by the Court, the defendant must file a brief within 40 days and the state must do so within 30 days. The hearing must be scheduled within 150 days of the transmittal of the transcript[7], though either side may request a continuance. Oral arguments typically take 30 minutes per side, and the decision is handed down via a written opinion.

On first review, the Court of Appeals will only rule upon issues that have been raised in or decided by the trial court. However, the Court has the discretion to expand its jurisdiction of review if the Court believes doing so will avoid additional appeals. In subsequent appeals, the Court reviews prior appellate decisions and considers only issues that have been raised in the petition for certiorari. If an issue of error in the trial court is raised, the court will consider whether or not the error was harmless (even if this issue was not previously raised). Rulings may be challenged through a motion for reconsideration within thirty days of the decision's filing.[8] It should be noted that after 1995, a defendant has the right to waive the automatic stay of a warrant of execution that occurs in the process of direct review following *Thanos v Maryland.*

Federal Habeas Corpus Review in US District Court

Once an appeal for post conviction relief is denied, the defendant is allowed to file for a writ of habeas corpus in the United States District Court for the District of Maryland. The review is available only after it is shown that the defendant has exhausted all possible processes of appeal within the State Court. However, the scope of habeas review is limited: habeas may only be raised on claims that are federal or constitutional in nature. Thus, Federal Habeas Corpus Review rarely addresses the state's factual determinations and as such, evidentiary hearings rarely occur. Defendants who have received a death sentence have a right to counsel. The US District Court has the authority to stay death sentences.

Federal Habeas Corpus Review in US Court of Appeals

If a defendant is denied relief in the United States District Court, he or she may appeal to the United States Court of Appeals for the Fourth Circuit. In order to appeal, the defendant must have

---

[6] Maryland Rules 8-301.

[7] Maryland Rules 8-306 (f)

[8] Maryland Rules 8-605(a).

a certificate of probable cause, the issuing of which occurs routinely in capital habeas corpus cases.[9] The case is argued as a regular appeal. If relief is denied in the U.S. Court of Appeals, the defendant has ninety days to seek review in the Supreme Court on a writ of certiorari. Since these costs are not borne directly by Maryland taxpayers, data were not collected from our sample on this stage.

Other Petitions for Relief

Once these stages of review have been exhausted, the defendant may also challenge their competency to be executed or seek commutation of the death sentence from the governor. Our sample does not contain any cost data associated with this process.

Within our sample, we observed case processing through federal appeals. Most cases in the sample do not proceed through all levels of the review process. For many cases, the process through review was not a linear one—we observed many instances in which petitions for post-conviction relief or appeals for leave to appeal were denied multiple times for the same defendant.

DATA COLLECTION

Data used in this analysis are developed from several sources. The foundation for the analysis is the data collected by University of Maryland researchers for their study of disparities in the application of the death penalty (Paternoster, Brame, Bacon and Ditchfield 2004). Paternoster identified 6,000 first and second degree murders committed in the state of Maryland from August 1978 until September 1999. From this sample, 1,311 cases were identified that were eligible to be prosecuted as capital cases. In these cases, either the state's attorney filed a notice of intention to seek the death penalty or the facts of the case clearly met death penalty eligibility criteria. The data include substantial information about cases attributes for each of the 1,311 cases. Eighty-four observations were multiple records of the same event (usually retrials for the same homicide). These trials were re-coded into a single defendant-level file, yielding a final sample of 1,227 observations. Of these 1,227 cases there were 173 cases with a death notice filed, and 56 death sentences.

While the Paternoster data provided a wealth of data about case attributes, data collected for that study do not record case events in each stage of case processing. Thus, while the Paternoster data were used to identify the samples in our study, and to observe case characteristics, they could not be used to estimate the costs of the case. In order to estimate the costs of each stage of case processing, we turned to two additional sources of data, an official records administrative database -- the Maryland Judiciary Case Search (MDJCS) Database -- containing data on individual case processing, and semi-structured interviews with prosecutors, defense counsel and judges to estimate the time spent in each phase of case processing. A brief description of each data source follows—a complete description of the data collection process can be found in **Appendix A**.

---

[9] Report of the Governor's Commission on the Death Penalty.

The Maryland Judiciary Case Search (MDJCS) Database

Traditionally, Maryland counties maintained hard copy records of each criminal case file either on location with the criminal clerk's office or at the Maryland Hall of Records in Annapolis, Maryland. Though some counties automated recordkeeping in the 1990s, recordkeeping in Maryland remains decentralized and at the county's discretion. In early 2006, the Maryland Judiciary initiated an online database, the Maryland Judiciary Case Search (MDJCS), in an effort to provide public access to a centralized source of electronic case records from all counties. The database is limited to cases that had some activity after the year (usually in the early 1990s) when the county where that case was adjudicated implemented its automated case management system.[10]

From the Paternoster dataset of 1,227 observations, key identifiers—case number, name, date of birth, year of case and trying county—were used as search criteria to locate electronic case dockets in the MDJCS database. We observed additional variables in MDJCS that were not available in Paternoster including key dates such as arraignment, trial days, hearings, motions, petitions and appeals. For each observation in Paternoster, we searched for an electronic record in MDJCS. To verify the accuracy of the MDJCS database, we conducted site visits to courthouses in Baltimore County, Baltimore City, Prince George's County and Anne Arundel County and compared data from MDJCS to data observed in the in-house databases. In all instances, the availability and the scope of records from both sources were found to be identical. Thus, we searched MDJCS for all 1,227 records in the Paternoster data. Many records, especially for cases with no activity after 1990, were missing in the MDJCS database. We could identify no other means of efficiently collecting these records.

Of the 1,227 observations in the analytic dataset, 538 dockets were classified as complete, 93 as incomplete and 596 as missing.[11] A case record was judged to be complete if it contained observable events appropriate to the full length of a case from arraignment to conclusion (typically marked by sentencing or an affirmed appeal). A docket was deemed incomplete if any phases or crucial events, such as a sentencing date, were unobservable. Dockets were labeled as missing if no data were available in the MDJCS database.

Each docket was coded into the Urban Institute database. The data that were coded described each stage of case processing, including dates of key events and durations (in days) of arraignments, hearings, trials, sentencing, appeals and petitions. These data on event-based case information were matched with the relevant observation in the Paternoster dataset.

Survey Data Collection

Not all required data were contained in either the Paternoster data or in the official records. Most importantly, neither data source contained any information about the amount of time

---

[10] According to the MDJCS website and numerous discussions with staff in several counties at the Criminal Division of the Clerk of the Circuit Court.

[11] These statistics refer to the sample of dockets that we searched for, and, subsequently we drop additional cases that had a not guilty verdict or a nolle prosse, to arrive at the final sample of 1,136 cases and the 509 cases that were fully coded and analyzed.

attorneys spent out of court working on these cases. To estimate these costs, we collaborated with a panel of defense and prosecution counsel who had experience trying capital cases to develop initial estimates of preparation time for a 'typical' no death notice case and a 'typical' death notice case at each stage of processing.

Following an initial introduction by telephone, the prosecution and defense estimates were faxed to one or more counsel in the State's Attorney's Offices and the Offices of the Public Defender, respectively, across Maryland's 24 counties. Counsel were then asked to review the initial time-based estimates and provide feedback and comments as to the accuracy of the estimates. In all, 16 defense estimates were sent to 15 counties and 37 prosecution estimates were sent to 23 counties. In addition, we employed a snowball sampling technique, and solicited names of additional respondents, who we also contacted. [12] Across all survey respondents, the only significant departure from the initial estimates was in regards to the estimated number of days of voir dire. We had initially used an estimate drawn from the Indiana death penalty study, which proved to be too high for the Maryland population. The final estimates cover the stages of pre-trial, guilt/innocence, penalty, appellate, post-conviction and other post-sentencing.

Federal Data

The automated Maryland data did not include any information about case processing at the federal level. To collect these data, we accessed federal data through the Public Access to Court Electronic Records (PACER) database. PACER contained information about case processing during federal habeas corpus review in US District Court and federal habeas corpus review in the US Court of Appeals. We collected data on the dates of habeas corpus petitions, the dates of court decisions, and the length of the phase overall. We again matched records and coded the data in the UI research database.

Removing Not Guilty and Nolle Prose Cases

In order to ensure a valid comparison between cases resulting in a death sentence and no death notice cases, all cases in which the prosecutor declined to prosecute or which resulted in an initial not guilty verdict were dropped from the initial sample of 1,227. These cases represent just 7% of our sample and yield a final analytical sample of 1,136. Cases resulting in a death sentence cannot, by definition, have resulted in a verdict other than guilty. A comparison of death sentence cases to a cohort of cases that resulted in some disposition other than "guilty" (and therefore cannot, by definition, have gone through the appellate process), risks overestimating the death sentence parameter by making a biased comparison.

However, we will fail to capture the impact of a death notice filed on the probability of innocence, which, in turn, could influence the differential costs associated with a the filing of a death

---

[12] Respondents generally requested anonymity. We received responses from attorneys who have participated in a substantial number of death penalty cases in Maryland. Given how few attorneys in absolute numbers have been involved in death penalty cases, especially among prosecutors, we can not also report response rates without violating that anonymity.

notice. However, given that a death notice and innocence are theoretically unrelated and empirically uncorrelated, we believe that the cost of removing cases not resulting in a guilty verdict are outweighed by the much more potent risk that our estimate of the cost of the death sentence will be biased upward (perhaps significantly so).

Constructing an Estimate of the Cost of Case Processing

Once all of the data were collected, they were combined to estimate the costs for each stage of case processing for each case in the sample. In this study, we count the opportunity cost of the death penalty, which is the value of resources in their next best use. Resources take the form of capital (such as the value of court space) and labor costs (salary and wages). We estimate the value of each resource (the price) in terms of the price per unit (such as one hour of attorney time). We estimate the value of all resources paid for by Maryland taxpayers in the processing of a death eligible case. We estimate costs for each defendant, and for each stage of case processing.[13]

Costs are calculated as the product of a price of a unit of input (such as hours) and the quantity of inputs used. Thus, our basic cost equation is:

$$\text{Cost}_i = \text{Price of unit of input}_i \text{ X Quantity of inputs}_i \qquad (1)$$

Following (1), we estimated the two components of cost, price and quantity, separately. For instance, we observed the price of an hour of an attorney's time, then multiplied that by the number of hours spent by each attorney in each stage of case processing. As is described in substantial detail in **Appendix C**, in general we estimate the price of each input from published sources, such as budgets. We estimate the quantity of each input consumed either from survey data or from the electronic dockets that report case processing details.

Thus, the quantity of inputs is a function of two separate quantities. Quantity data derived from the electronic court dockets on the number of each type of adjudication event vary by defendant. Quantity data derived from the attorney surveys is assumed to be the same for each case. For instance, when we calculate the costs of appeals for a defendant, we observe the number of appeals in that defendant's case from court dockets. We then assume a fixed quantity of hours to process that case for each of the attorneys involved, using the results of the survey to calculate those fixed quantities. In the analysis, a single record was created for each individual in the dataset. If a defendant had a retrial, as was the case for 64 defendants in our sample, all of those retrials were aggregated into a single event record.

All of the cost estimates in this section describe retrospective costs. That is, they describe events that have already transpired. However, some costs of the death penalty in Maryland for our

---

[13] Because we are comparing trial costs of capital cases and non-capital cases, we dropped from our comparison group cases which were acquitted. Given that these cases could not possibly receive the same cost inputs as the treatment group, including them would have deflated the cost of the comparison group and artificially raised the differential cost of death penalty as compared to cases which did not receive the death penalty.

sample are predictable, but have not yet occurred. These costs are costs associated with incarceration, and are described in the next section.

Cost of Prison

Many individuals in the sample were in prison at the time data were collected for this study. Thus, individual prison costs include a retrospective component – how much time has already been spent in prison (and how much of that time has been spent on death row) – and a forecasted component – an estimate of how much time any individual will spend in prison until they either complete their sentence or die. Because we cannot observe when inmates died, when they will die, or when they will be released from prison, we estimate an expected date of exit from prison for each inmate predicted by individual attributes (including sentence length). Past prison costs were estimated in constant 2007 dollars. Future costs were estimated using forecasted rates of increases in spending and were discounted at a rate of 5% per year. The prison cost estimates are based on observed costs of prison in Maryland for both general prison populations and death row inmates. Prison cost estimates are adjusted to account for prison and health care inflation. Methods used to estimate lifetime prison costs for each individual in our sample can be found in **Appendix A.**

METHODS

Multivariate models were used to estimate the lifetime costs of cases as a function of capital punishment as well as case characteristics. The analysis proceeded in three stages.

- In the first stage, we account for the fact that we were unable to observe data in our sample for every case in our population of interest. In order for the cases with data to be comparable to the cases where data are missing, we generated weights so the sample data resemble the population of all death penalty cases between 1978 and 1999. A logistic regression was specified in order to generate sampling weights. These weights are used in all analyses. The explanatory power of the model ($R^2 = 0.44$) was high, indicating that the econometric model is able to accurately predict whether or not cases were complete. We found no difference in the probability that cases with a death notice had complete data. These weights were used in all subsequent analyses.
- In the second stage, we accounted for potential differences between cases where a death notice was filed and cases where no death notice was filed. By modeling the prosecutor's decision to file a death notice, we account for the possibility that cases that received a death notice might have been more costly even if there had been no death statute. A second logistic regression model was utilized to model the prosecutor's decision to file a death notice. These models yielded a propensity score – the probability that a case received a death notice conditional on that case's attributes – for each case in our sample. The propensity scores were then used in outcome models to reduce any potential bias resulting from differences in death notice and no death notice cases. Variables included in the

models to generate the propensity scores were chosen using standard theoretical and econometric reasoning and include: age of defendant; race of victim; whether the victim was executed, killed in their own home, was elderly or frail and/or was unable to defend themselves; whether the evidence against the defendant was circumstantial; whether the same incident produced multiple murder victims; the county where the trial took place; and the year.

- The final stage of the analysis uses sampling weights generated in the first stage of the analysis and propensity scores generated in the second stage of the analysis to model the cost of capital eligible cases in Maryland using ordinary least squares (OLS) regression. These models regress total costs of each capital eligible case in Maryland on whether a death notice was filed, whether there was a death sentence and other variables that might explain the costs of the case including the attributes of the defendant, victim and offender; the nature of the homicide; and the strength of the prosecution's case.

A detailed description of the methods used in this study can be found in **Appendix B**.

RESULTS

Descriptive Statistics

Table 3 presents descriptive statistics for all variables used in the analysis. The table describes the attributes of victims and defendants, and the facts of the homicide. These descriptive statistics serve two purposes – they describe the attributes of the cases included in the study and provide context to the analysis, and they are a diagnostic to identify differences between the samples. Overall, the average age of offenders in the sample is 26 and more than three quarters of defendants were black. Almost all (93%) of defendants had a prior felony charge. Sixty percent of defendants report prior alcohol abuse and 40% report job problems. There are few differences in defendant attributes across the groups. Those who receive a death sentence are older than average (29 years) although the cohort of all defendants in a death case are younger (23.7 years) than the full sample.

The majority of victims across the sample (60%) were non-white. Only a few, 3%, were identified as either elderly or frail and 12% were identified by investigators as unable to defend themselves. Twenty-one percent involved homicides with multiple victims and 41% of cases involved a defendant who was unknown to at least one of the victims. Victims were sexually assaulted in 9% of cases, murdered 'execution-style' in 12% of cases and, in 26% of cases, victims were murdered in their own homes.

Just 3% of cases were identified by a detective as being based primarily on circumstantial evidence and the defendant confessed to the homicide in 16% of cases. Overall, the average case met the criteria for 1.3 statutory aggravators with 5% of cases containing no aggravating factors and

23% of cases containing more than one factor. Nearly 80% of capital eligible cases stemmed from offenses taking place in three Maryland counties – Baltimore City, Baltimore County and Prince Georges County. The median case was filed in 1992, with case filings ranging from 1979 to 1999.

Differences between groups are tested through two comparisons. Cases with a death notice are compared to cases with no death notice, and cases with a death sentence are compared to cases with no death notice. Significance levels, indicated by asterisks in the table, were calculated using mean comparison t-tests. A few differences between the samples emerge from this analysis. Cases in which the defendant was under the age of 18 were less likely to receive a death notice or a death sentence (such defendants were excluded from death eligibility under Maryland law beginning in 1987). Death notices and death sentences were more likely to be filed in cases where at least one of the victims was white and where at least one of the victims was unable to defend himself. Cases in which the defendant was a stranger to at least one of the victims and where the murder was committed during the commission of another felony were more likely to receive a death notice and a death sentence.

Table 3. Descriptive Statistics

	Death notice not filed (n = 425)		Death notice filed (n = 55)		Death sentence returned (n = 29)		Entire Sample (n = 509)	
	Mean	S.D.	Mean	S.D.	Mean	S.D.	Mean	S.D.
Defendant Characteristics								
Age	26.42	15.71	23.72	11.95	29.08	15.96	26.28	15.37
D race is white	0.20	0.50	0.30	0.50	0.23	0.39	0.22	0.50
D has a prior felony charge	0.93	0.55	0.83*	0.44	1.02	0.48	0.93	0.54
D has a history of alcohol abuse	0.58	0.66	0.63	0.53	0.76	0.68	0.60	0.65
D has a troubled job history	0.38	0.55	0.46	0.56	0.65*	0.70	0.40	0.56
Victim characteristics								
V race is white	0.36	0.62	0.56**	0.59	0.71**	0.68	0.40	0.63
V is unable to defend oneself	0.10	0.34	0.20**	0.36	0.26*	0.46	0.12	0.35
V is elderly or frail	0.03	0.2	0.05	0.18	0.12	0.30	0.03	0.21
Offense characteristics								
Multiple victims	0.20	0.47	0.13	0.32	0.53***	0.65	0.21	0.48
D was a stranger to any V	0.39	0.58	0.52	0.59	0.60*	0.66	0.41	0.58
V was sex assaulted	0.08	0.33	0.16*	0.34	0.20	0.50	0.09	0.34
V was executed	0.1	0.33	0.10	0.28	0.27*	0.44	0.11	0.33
V made made to beg for life	0.07	0.31	0.12	0.32	0.11	0.31	0.08	0.31
V took a long time to die	0.08	0.34	0.12	0.30	0.05	0.19	0.09	0.33
V was killed in own home	0.24	0.50	0.23	0.38	0.61***	0.63	0.26	0.51
D persisted even when V's death was certain	0.14	0.41	0.19	0.35	0.25	0.62	0.15	0.42
D attempted to evade capture	0.11	0.34	0.14	0.30	0.22	0.43	0.12	0.34
D confessed to the crime	0.15	0.40	0.19	0.38	0.19	0.39	0.16	0.40
Evdience against D was circumstantial	0.02	0.12	0.02	0.13	0.08	0.25	0.03	0.13
Statutory Aggravators								
A1 - V was a law enforecement officer	0.00	0.06	0.04	0.17	0.10*	0.30	0.01	0.11
A2 - D committed murder in a correctional institution	0.03	0.19	0.00***	0.00	0.00***	0.00	0.03	0.17
A3 - D committed murder trying to escape custody	0.01	0.14	0.03	0.15	0.06	0.21	0.02	0.14
A4 - V was murdered in the course of an abduction	0.10	0.33	0.20*	0.38	0.08	0.23	0.11	0.34
A5 - V was a child abductee	0.04	0.22	0.05	0.20	0.00***	0.00	0.04	0.21
A6 - D murdered in money for hire case	0.04	0.26	0.05	0.17	0.04	0.17	0.04	0.24
A7 - D employed another who killed for renumeration	0.03	0.24	0.03	0.15	0.06	0.23	0.04	0.23
A8 - D committed murder while under life sentence	0.00	0.04	0.00	0.00	0.00	0.00	0.00	0.04
A9 - Same incident produced multiple murder victims	0.18	0.44	0.13	0.32	0.53***	0.65	0.19	0.45
A10 - D committed murder during another offense	0.69	0.65	0.76	0.50	0.90*	0.59	0.71	0.64
County Dummies								
County = Anne Arundel	0.08	0.36	0.07	0.29	0.03	0.17	0.08	0.34
County = Baltimore City	0.44	0.66	0.07***	0.37	0.13***	0.43	0.38	0.64
County = Baltimore County	0.09	0.29	0.34***	0.43	0.55***	0.68	0.14	0.36
County = Harford	0.01	0.15	0.04	0.2	0.00*	0.00	0.01	0.15
County = Montgomery	0.07	0.26	0.05	0.2	0.05	0.21	0.07	0.25
County = Prince Georges	0.28	0.42	0.24	0.35	0.15**	0.32	0.27	0.41
County = Other	0.06	0.38	0.07	0.37	0.09	0.35	0.06	0.37
Year of Case	1992	5.14	1989***	5.71	1988***	5.34	1991	5.32

Significance-levels are based on group mean comparison tests detailing two comparisons: (1) cases in which a death notice was filed versus cases in wich a death notice was not filed and (2) cases in which a death sentence is returned versus cases in which a death notice is not filed. All analyses are conducted using sampling weights.

Significance testing: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Overall, cases in Baltimore City were substantially underrepresented in the death notice and death sentence groups (suggesting that death notices and death sentences were less common in that jurisdiction) whereas cases in Baltimore County were substantially overrepresented among death notice filings and death sentences returned. Finally, death notices and death sentences were more likely to occur in older cases.

Within our data, we observed events up until the level of federal appeals. However, a majority of cases did not go through all levels of the review process, and we observed many instances in which petitions for post-conviction relief or appeals for leave to appeal were denied multiple times for the same defendant.

Sample Size By Phase

For our sample of 509 cases, we observed 336 cases that made it to a trial (the remainder were pleas), 84 cases that had a penalty phase, and 283 cases that filed at least one appeal.

At the post-conviction stage, the majority of cases (326) did not receive a hearing. Of the rest, 149 had an initial post-conviction review (15 of which had received a death sentence), and 34 had multiple post conviction reviews (three of which had received a death sentence). Past this stage, only one non-capital case was assumed to have had a Federal Habeas review while 14 death sentence cases filed a petition of habeas corpus. At the federal appellate level, we observed 10 defendants who appealed their death sentence.

Table 4. Sample of Cases at Each Stage of Processing

Stage	Total Cases	Death Notice*	Death Sentence
Plea	173	4	1
Trial	336	84	29
Penalty phase	84	84	29
Appeals (state)	309	70	27
- Multiple appeals	70	22	15
Post-Conviction Hearing	160	32	15
- Multiple post-conviction hearings	34	4	3
US District Court	15**	14	14
- Multiple petitions of habeas corpus	2	2	2
Federal Court of Appeals	10	10	10
- Multiple appeals	1	1	1

Source: Urban Institute
Notes: * These numbers include death sentence; * *This cost was distributed amongst non-death sentence cases

Event Data By Phase

Table 5 presents event data for each state-level stage of a capital eligible case, on an individual defendant level. Days refer to working days (Mon-Fri) and the length of phase does not include trial days. Death sentence cases have a higher average number of trial days, hearing days, and overall

length of phase at every stage of the trial except for post-conviction. The length of phase for the penalty trial includes retrials of the penalty phase, which can be longer than a year from when the retrial is remanded until the actual onset of the trial.

Table 5. Time Elapsed for Key Events in Working Days

Variable	No Death (n=425)	Death Notice (n=55)	Death Sentence (n=29)
Guilt Phase			
Length of Phase	237.2	262.0	312.7
Hearing Days	1.6	3.8	4.3
Trial Days	3.1	7.0	7.4
Penalty Phase			
Length of Phase	--	100.2	152.4
Number of trial days	--	3.2	5.8
Number of hearing days	--	0.8	1.5
Post Conviction Phase			
Length of Phase	382.6	333.9	302.9
Number of hearing days	1.4	1.9	2.9
Appellate Phase			
Number of Appeals	0.7	1.3	1.9

Source: Urban Institute.

Bivariate Estimates of the Cost of the Death Penalty

Table 6 presents bivariate cost estimates for each of the stages of a capital eligible case. Death notice cases are significantly more expensive than cases in which a death notice was not filed in three stages of case processing: (1) the guilt trial ($601,000), (2) the penalty trial ($71,000) and (3) the state-level appellate phase ($134,000). No statistically significant differences in cost were observed during the post-conviction, federal appellate or federal habeus phases. Though prison sentences were, on average, slightly longer among individuals against whom a death notice was sought, there were no significant differences in lifetime prison costs between the two groups.

Table 6.

Bivariate Outcomes

	Death notice not filed (n = 425)		Death notice filed (n = 55)		Death sentence returned (n = 29)	
	Mean	S.D.	Mean	S.D.	Mean	S.D.
Phase						
Guilt trial	$158	$94	$601***	$289	$775***	$381
Penalty trial	$0	$0	$71***	$74	$263***	$289
Post-conviction	$40	$73	$39	$64	$82**	$101
Appellate	$42	$45	$134***	$96	$474***	$300
Other (state-level)	$1	$3	$2*	$40	$9***	$11
Federal habeas	$0	$0	$0	$0	$82***	$137
Federal appellate	$0	$0	$0	$0	$14	$78
Prison	$862	$549	$946	$540	$1,318***	$704

Significance-levels are based on group mean comparison tests detailing two comparisons: (1) cases in which a death notice was filed versus cases in which a death notice was not filed and (2) cases in which a death sentence s returned versus cases in which a death notice is not filed. All analyses are conducted using sampling weights.
Significance testing: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Cases resulting in a death sentence were significantly more expensive than cases in which a death notice was not filed in all but one phase of case processing. Four phases – the guilt trial ($775,000), the penalty trial ($263,000), the appellate process at the state level ($483,000), and the lifetime cost of prison ($1.3 million) – explain the majority of the differences in cost.

The results in **Table 6** do not account for potentially confounding explanations of the differences in cost. That is, it is possible that some of the differences between groups described in Table 3 are responsible for the differences. For example, it is possible that cases in Baltimore County (where there are significantly more death notices filed than average) are routinely more expensive to process than are cases in other counties, and thus the differences in Table 4 are due to differences in county costs and not the costs of the death penalty. Or, it might be that particularly horrifying or complicated cases may have cost more to prosecute regardless of whether they were processed under a death statute. To account for these possibilities we specify eight regression models that control for competing explanations of the differences in cost.

Table 7 displays regression coefficients from eight OLS models in which the dependent variable is the total cost of case processing. In each of the models, we report two coefficients: the additional cost associated with the filing of a death notice, and the additional cost associated with the receipt of a death sentence. We first specify a model (1) that contains only the two main effects – dummy variables for the filing of a death notice and the returning of a death sentence. In model (2)

we add the propensity score estimates generated in Stage 2 of the analysis. In effect, these propensity scores account for the underlying differences in the propensity of cases to have a death notice. Models (3)-(8) progressively add selected sets of covariates to prior models. We first add in the year of case, and then sequentially add a set of county dummy variables, dummy variables describing attributes of the defendant, attributes of the victims, case characteristics and the presence of statutory aggravators. Model (8) includes all covariates. All parameter estimates in Table 5 are reported in thousands of dollars.

Table 7.

Total Cost of Case Processing

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Death notice filed = 1	$699***	$621***	$624***	$649***	$630***	$627***	$669***	$659***
	($110)	($121)	($121)	($112)	($105)	($105)	($104)	($106)
Death sentence returned = 1	$1,318***	$1,222***	$1,217***	$1,155***	$1,256***	$1,267***	$1,248***	$1,252***
	($387)	($382)	($389)	($403)	($362)	($363)	($351)	($365)
Propensity Score Included?	NO	YES	YES	YES	YES	YES	YES	YES
Year of Case Included?	NO	NO	YES	YES	YES	YES	YES	YES
County Dummies?	NO	NO	NO	YES	YES	YES	YES	YES
Defendant Characteristics?	NO	NO	NO	NO	YES	YES	YES	YES
Victim Characteristics?	NO	NO	NO	NO	NO	YES	YES	YES
Case Characteristics?	NO	NO	NO	NO	NO	NO	YES	YES
Statutory Aggravators?	NO	NO	NO	NO	NO	NO	NO	YES
R^2	0.357	0.365	0.366	0.397	0.457	0.458	0.486	0.489
N	509	509	509	509	509	509	509	509

Each column reports selected coefficients from an OLS regression of the total cost of case processing. The coefficient on a death notice filed is the cost associated with a death notice cases, above the cost of a capital-eligible case in which a death notice is not filed. The coefficient on a death sentence returned is the cost associated with a death sentence, above the cost of a case in which a death notice is filed. The intercept parameter is the cost of a capital-eligible case in which a death notice is not filed. Coefficients are reported in thousands of dollars. All models are run using sampling weights winsorized at a value of four and, in all models, robust standard errors are reported.
Significance testing: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

In Model (1), the coefficient on the intercept parameter is $1.1 million (not reported in the table). This coefficient can be interpreted as the cost of an average case which did not receive a death notice. Thus, the average death eligible case in Maryland has total costs (including prison) of $1.1 million. The death notice parameter is $699,000 indicating that a death notice case is approximately $700,000 more expensive than a case in which a death notice is not filed. The death sentence parameter of $1.3 million is the additional cost of a case in which a death sentence is returned relative to a case in which a death notice is filed but where a death sentence is not returned. All parameter estimates were statistically significant at $p < 0.01$ and the base model explained approximately 36% of the variation in the cost. Overall, without controlling for other factors theoretically related to the cost of case processing, an average death notice case costs approximately $1.8 million and an average death sentence case costs approximately $3.1 million.

Model (2) adds the propensity score to Model (1). The propensity score parameter is significant at $p<0.05$ and since the propensity score captures each case's probability of receiving a death notice

conditional upon the fifteen predictors in Table 2, the effect of adding the propensity score to the outcome model is to reduce the estimated treatment effects by 9% and 5%, respectively. As each successive set of covariates is added to the model, though the predictive power of the models rise, the estimated treatment effects remain remarkably stable, with the death notice parameter falling between $638,000 and $698,000 and the death sentence parameter falling between $1.13 million and $1.26 million in Models (2)-(8).[14]

We report the costs of the death penalty from the results of Model (7). This model achieves the optimal balance between explanatory power and parsimony.[15] Thus, the costs of the death penalty to the taxpayers of Maryland are as follows. A capital eligible case in Maryland costs about $1.1 million to process including all judicial and correctional expenses. If a case has a death notice, $669,000 in additional costs are added, for a total cost of about $1.8 million. If a case results in a death sentence, $1.25 million in additional costs are added, for a total of $1.9 million in additional costs, and a total cost of processing of about $3 million per case.

The costs describe above can be parsed to show the additional cost at each stage of case processing. **Table 8** divides the costs into stages, and reports the results of regression models on each of the eight stages of case processing. The set of controls included in Model (7) in **Table 7** are included in all models.[16]

Table 8.

Cost of Case Processing by Stage

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Guilt Trial	Penalty Trial	Post-Conviction	Appellate	Other (State-Level)	Federal Habeas	Federal Appellate	Prisons
Death notice filed = 1	$474***	$64***	-$9	$86***	$1	-$1	-$1	$55
	($48)	($16)	($11)	($19)	($1)	($4)	($1)	($92)
Death sentence returned = 1	$142*	$262**	$42**	$381***	$6***	$88***	$11	$316*
	($84)	($103)	($18)	($84)	($2)	($28)	($11)	($165)
R^2	0.636	0.441	0.122	0.572	0.252	0.342	0.077	0.223
N	509	509	509	509	509	509	509	509

Each column reports selected coefficients from an OLS regression of the total cost of case processing. All models contain the same control variables as model (7) in Table 3. The coefficient on a death notice filed is the cost associated with a death notice cases, above the cost of a capital-eligible case in which a death notice is not filed. The coefficient on a death sentence returned is the cost associated with a death sentence, above the cost of a case in which a death notice is filed. The intercept parameter is the cost of a capital-eligible case in which a death notice is not filed. Coefficients are reported in thousands of dollars. In all models, robust standard errors are reported.
Significance testing: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

[14] Notably, costs associated with the death notice and the death sentence increase as additional covariates are added to the model. Thus, we can conclude that, if anything, variables that are positively related to the cost of case processing tend to be negatively related to the presence of a death notice or a death sentence, having controlled for the probability that a case receives a death notice.

[15] Technically, Model (7) had the lowest value of the Akaike Information Criterion (AIC) indicating that the model has the maximum explanatory power conditional on the number of predictors entered into the model.

[16] The coefficients in **Table 6** sum to the values of the parameters in **Table 5** on death notice and death sentence respectively..

Cases receiving a death notices are approximately $470,000 more costly during the trial phase, $64,000 more costly during the penalty phase and $86,000 more costly during the appellate phase than a capital eligible case where no death notice was filed.[17] These differences are significant at $p<0.05$. Cases resulting in a death sentence were significantly more costly during every stage of case processing ($p<0.1$) with the exception of the federal appeals stage.

Costs of the Office of the Public Defender, Capital Defense Division

A statewide office established in 1988, the Capital Defense Division coordinates the delivery of legal defense services, arranges for experts and advises counsel in capital cases. In addition, the Division focuses on "convincing the State pretrial that a notice to seek a sentence of death should not be filed because it did not satisfy legal criteria or because it was not warranted despite technical eligibility" (Office of the Public Defender 2006, 124). As a result, the total number of death notice cases "does not appear to accurately represent the potential workload involved in handling these complex matters" (Ostrom, Kleiman and Ryan 2005:112). Since the Division "is generally administrative in nature and rarely litigates death penalty cases" (Department of Legislative Services 2004:4), the office's costs are not included within expenditures captured elsewhere in the study.

Accordingly, we consider the cost of the Division as an additional cost of capital punishment above the per case costs, that is applied to all capital eligible cases whether or not the prosecution eventually files a death notice. Employing State of Maryland Operating Budget Details, we record total expenditures (in 2007 dollars) over a period of five years and subtract out technical and special fees to avoid double-counting the cost of specialists and expert witnesses. We take the inflation-adjusted, five-year annual average of Division expenditures, $563,575.46, and apply it to the years in the sample for which the Division operated (1988-1999). This estimate adds an additional $6.2 million to cases in our sample occurring 1988-1999. However, due to the protracted nature of capital litigation, cases in our sample will have activity beyond 1999. We calculate these costs as follows. In 2000 and 2001 the average caseload of transferred (old) cases is 41%, and all of these cases are in our sample. We calculate additional costs from cases in our sample as $(0.41)^n$ where n is the number of years beyond 1999. We then sum each year. We estimate another $0.95 million in Capital Defense Division costs accruing to the cases in our sample beyond 1999. The total estimated cost of the Capital Defense Division accrued to cases in our sample is $7.2 million.

Summary

The results can be summed across all cases. That is, because cases in the sample were weighted in these analyses to reflect the full sample of 1,136. In total, the 162 cases with a death notice cost Maryland taxpayers an additional $1 86 million or more than $1 million per death notice over and above the costs where there was no death notice. Of this total, cases were the death penalty was sought, but that did not result in a death sentence cost Maryland taxpayers an additional $70.9

[17] The estimates are for all death notice cases and includes cases that did not progress to that stage of case processing. Thus, the average cost of only those cases that made it to the penalty phase and the appellate would be higher.

million dollars. Cases resulting in a death sentence cost Maryland taxpayers an additional $107.4 million. Additionally, the Capital Defense Division cost $7.2 million.

Sensitivity Analysis

Some assumptions were built into the analysis. For the most part, where an assumption had to be made, we took a conservative approach. That is, we made an assumption that would make it more difficult to find an additional cost of the death penalty. An example of this is the most important assumption in the analysis which centers on the issue of a death notice 'sticking'. In more than 100 cases, a death notice was filed but by the time the case reached trial the death penalty was no longer being sought. Unfortunately, no data were available to determine when the decision not to proceed with the death notice occurred. If these cases followed the usual pattern of death notice cases, then substantial additional resources were applied to these resources, perhaps hundreds of thousands of dollars given that the average death notice cases cost $474,000 more than no death notice cases just through the trial stage. However, since we could not empirically observe those additional expenses, we assumed the additional costs were zero, which almost certainly leads to an underestimate of the costs of the death penalty.

An additional assumption that is often contentious in any study that seeks to predict future spending is the choice of a discount rate. Research estimating future costs generally controls for the time value of money - the concept that an expenditure in the future is less costly than an expenditure of the same magnitude today. In general, higher discount rates produce smaller estimates of future costs. In this case, we were able to test our use of a 5% discount rate. The models in Table 5 and 6 were re-run twice, once using a discount rate equal to the rate of prison inflation (2.1%), and a second time with a discount rate set to zero. In each case, the parameter estimate on death notice decreased by approximately 3% and the parameter estimate on death sentence increased by approximately 3% indicating that results are highly robust to the choice of discount rate.

DISCUSSION

Extant literature on the costs of capital punishment unambiguously finds that capital cases are more expensive to prosecute from beginning to end than non-capital cases. However, past research has generally only studied a subset of cases in a given jurisdiction. Moreover, to date, no study has accounted for the possibility that many other variables related to the cost of case processing or the process of selecting cases for death penalty prosecution explain the cost differential. This research examines 509 capital-eligible cases that resulted in a guilty verdict in Maryland between 1978-1999, nearly half of the cases prosecuted during this time period, and more than 75% of cases prosecuted after 1989. Costs are modeled using multivariate models controlling for more than twenty covariates theoretically related to seeking the death penalty and/or the expected costs of the case.

We find a strong, positive association between both the filing of a death notice and a death sentence and the cost of processing the case. On average, a death notice adds about $670,000 in

costs over the duration of a case. A death sentence adds an additional $1.2 million in processing costs, for a total additional cost of about $1.9 million over and above the costs of a case where no death notice is filed. All models have a high degree of explanatory power and results are robust to specification and to changes in the discount rate applied to costs incurred in the future. These results are generally consistent with the extant literature documenting the costs of capital punishment in other states. In addition, Maryland spent more than $7 million on the Capital Defense Division above the per case costs calculated above for cases in this study.

Selection into capital prosecution – that is, the choice by the prosecutor to seek the death penalty -- is found to have a statistically significant and empirically relevant impact on findings. Put another way, we find that the cases for which the prosecutor seeks a death sentence have characteristics that would have made it more expensive to prosecute even had there been no death statute. Including a selection variable in the model reduces the estimate of the differential cost of a death notice and a death sentence by 11% and 7% respectively. However, when other variables theoretically related to costs are added to the model with the selection variable, the reduction in costs associated with selection is about 5%.

The majority (70%) of the cost differential between a death notice and a non-death notice case occurs during the trial phase. This difference is due to a greater number of pre-trial motions, longer and more intensive voir dire, longer trials and a greater amount of general preparation time. In addition, a typical capital case involves two attorneys on each side of the aisle while a case in which a death notice is not filed usually involves a single attorney. Another systematic cost difference between capital and non-capital cases is the penalty trial. For cases in which a death notice is not filed, sentencing will be held before a judge and there is no penalty trial. In cases in which a death notice is filed and the defendant does not subsequently enter into a plea agreement, the defendant is entitled to a penalty trial in which witnesses and experts testify and a sentence is determined by a jury. For an average case in which a death notice is filed (some of which reach a plea agreement prior to the penalty trial) the costs of the penalty phase are about $64,000.

Death notice cases are also more likely to incur costs during the appellate phase even where a death sentence is not handed down. Though some of these additional costs are likely due to the egregious nature of the offense, even after accounting for characteristics of the victim, the defendant and the case, these differences persist indicating that these cases are nevertheless prosecuted more intensively at the appellate level. Prison costs between death notice and non-death notice cases and sentence lengths do not systematically vary between the two groups.

When considering the costs of death sentence cases versus cases in which a death notice was not sought, differences occur at nearly every phase of the case. Trial costs are higher by $616,000 and cases in the penalty phase (which always occurs in cases that eventually reached a death sentence) were $326,000. The post-conviction stage in which additional motions are filed are higher by approximately $50,000 and the appellate phase which contains a greater number of appeals and hearings results in an additional $467,000 in cost. An additional $88,000 in costs are borne during

the federal habeas stage in which motions are heard by a federal appeals court. Finally, defendants sentenced to death actually have significantly more prison costs ($316,000). This is partly because the type of confinement for death sentenced inmates is more expensive, but also due to the reality that few of those sentenced to death are actually executed.

Limitations

The current study is not without limitations. First, the study relies heavily on the accuracy of information on the amount of time spent on an average case reported to us by prosecutors, judges, and public defenders. Data were collected post-hoc and respondents were asked to provide information on an "average" or "typical" case potentially introducing recall bias.

Second, although multivariate models explained a high proportion of variation in the cost of case processing, we cannot rule out the possibility that the coefficients on treatment dummies are biased due to the presence of one or more omitted variables. Of particular concern is the fact that due to both information and statistical constraints, we were unable to account for case clustering among prosecutors, defense attorneys and judges, all of which might reasonably be related to the cost of a case. However, it should be noted that the explained variance in this study was exceptionally high for a social science study of this type.

Third, prison costs estimated for each individual in the study sample rely on estimated counterfactual ages of death that are not sensitive to whether or not a defendant was under sentence of death. If living under sentence of death itself impacts life expectancy then prison costs may be subject to either upward or downward bias, depending on whether those on death row live longer or shorter lives.

Finally, though this study captures the costs associated with a large number of case events, there are additional costs associated with capital cases that can not be estimated. As inclusion of any omitted costs would likely increase the estimated cost of capital punishment to an even greater degree, the estimated costs found in this study are perhaps best interpreted as a conservative estimate of the differential cost of capital punishment. As noted, we do not include the costs of cases where the death notice did not 'stick' and was not prosecuted as a death notice case at trial. We exclude cases with a not guilty verdict or a nolle prose. In 7% of death noticed cases, or 11 cases total, the final result was not guilty. Because this study sought to compare the costs of death penalty and non-death penalty cases, those cases were excluded to ensure that only similar cases were compared. Any stage of processing beyond federal appeals, such as costs associated with the commutation process or litigation around competency to be executed could not be observed and were not included here. Finally, it is possible that there were additional costs associated with no death notice cases where defense counsel fought a death notice filing and the prosecution did not prepare a death notice filing.

REFERENCES

American Bar Association. (2003). "Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.

Arias, Elizabeth. "United States Life Tables, 2003". National Vital Statistical Report 54/14. April 19, 2006. Retrieved 20 Dec., 2007. Website: http://www.cdc.gov/nchs/data/nvsr/nvsr54/nvsr54_14.pdf

Baicker, Katherine. (2004). "The Budgetary Repercussions of Capital Convictions". Advances in Economic Analysis & Policy 4.

Berk, Richard A. (1983). "An Introduction to Sample Selection Bias in Sociological Data". American Sociological Review, Vol. 48, No.3: 386-398

Caliendo, Marco and Sabine Kopeinig. (2005). "Some Practical Guidance for the Implementation of Propensity Score Matching". IZA Discussion Paper No.1588.

Cook, Philip, D.B. Slawson and L.A. Gries. (1993). The Costs of Processing Murder Cases in North Carolina. Terry Sandford Institute of Public policy, Duke University.

Dehejia, Rajeev and Sadek Wahba. (1998)."Propensity score matching methods for non-experimental casual studies". National Bureau of Economic Research.

Department of Legislative Services, Maryland General Assembly. (2004). Fiscal and Policy Note, House Bill 521. http://house.state.md.us/2004rs/fnotes/bil_0001/hb0521.doc

Dezhbakhsh and Shepherd (2006). "The Deterrent Effect of Capital Punishment From a Judicial Experiment". Economic Inquiry.

Donohue, John J. and Justin Wolfers. (2006) "Uses and Abuses of Empirical Evidence in the Death Penalty Debate." National Bureau of Economic Research Working Paper 11982.

Ehrlich, Issac. (1975). "The Deterrent Effect of Capital Punishment: A Question of Life and Death." American Economic Review, 65: 397-417.

Forsberg, Mary. (2005). "Money For Nothing? The Financial Costs of New Jersey's Death Penalty." New Jersey Policy Perspective.

Forst, Brian E. (1983). "Capital punishment and deterrence: Conflicting evidence?" Journal of Criminal Law and Criminology 74:927-42.

Garey, Margot. (1985). "The Cost of Taking a Life: Dollars and Sense of the Death Penalty." UC Davis Law Review.

Goodpaster, Mark. (2002). "Cost Comparison between a Death Penalty Case and a Case Where the Charge and Conviction is Life without Parole. In the Application of Indiana's Capital Sentencing Law: Findings of the Indiana Criminal Law Study Commission." Retrieved 20 Dec. 2007. Website: http://www.in.gov/cji/special-initiatives/law_book.pdf

Governor's Commission on the Death Penalty. (1993). An Analysis of Capital Punishment in Maryland: 1978-1993.

Greene, William H. (1981). "Sample Selection Bias as a Specification Error: A Comment". Econometrica, Vol. 49, No.3: 795-798

Heckman, James J.(1977). "Sample selection bias as a specification error". March 1977. National Bureau of Economic Research.

Heckman, James and Edward J. Vytlacil.(2000). "Instrumental variables, selection models and tight bound on the average treatment effect". National Bureau of Economic Research.

Heckman, James, Hidehiko Ichimura and Petra Todd. (1998). "Matching as an Econometric Evaluation Estimator". The Review of Economic Studies, Vol. 65, No.2: 261-294

Katz, Lawrence, Steven D. Levitt and Ellen Shustorovich. (2003). "Prison Conditions, Capital Punishment, and Deterrence," American Law and Economics Review V5: 318-343.

Maryland Access Rule. http://mdcourts.gov/access/ro-accesstoctrecords.pdf

Maryland House Appropriations Committee. (1985). "Committee to Study the Death Penalty in Maryland Final Report: The Cost and Hours Associated with Processing a Sample of First Degree Murder Cases For Which the Death Penalty was Sought in Maryland Between July 1979 and March 1984." Maryland House Appropriations Committee.

Maryland Judiciary Case Search. http://casesearch.courts.state.md.us/inquiry/inquiry-index.jsp

Maryland Judiciary Offers Internet Case Search of Court Records. (2006). Court Information Office. Website: http://www.courts.state.md.us/press/2006/pr03-07-06.html

Mocan, H. and R. Kaj Gittings. (2003). Getting off Death Row: Commutted Sentences and the Deterrent Effect of Capital Punishment. The Journal of Law and Economics 46: 453-478.

Mumola, Christopher J.(2007). "Medical Causes of Death in State Prison, 2001-2004". Bureau of Justice Statistics.

New Jersey Death Penalty Study Commission. (2007). "New Jersey Death Penalty Study Commission Report."

New York State Defenders Association. (1982). "Capital Losses: The Price of the Death Penalty in New York State." Albany, NY: New York State Defenders Association.

Office of the Public Defender, State of Maryland. (2006). *Fiscal Year 2006 Annual Report.* http://www.opd.state.md.us/Index%20Assets/Annual%20Report%202006.pdf

Orszag, Peter. (2008). "CBO Testimony before the committee on the Budget of the United States Senate: Growth in Health Care Costs." Congressional Budget Office.

Ostrom, Brian J., Matthew Kleiman and Christopher Ryan. (2005). National Center for State Courts. *Maryland Attorney and Staff Workload Assessment, 2005.* http://www.ncsconline.org/WC/Publications/Res_WorkLd_MDAtty&StaffWkLdAs05Pub.pdf

Paternoster, Raymond et al. (2003). An Empirical Analysis of Maryland's Death Sentencing System with Respect to the Influence of Race and Legal Jurisdiction.

Paternoster, Raymond, Robert Brame, Sarah Bacon and Andrew Ditchfield. (2004). Justice by Geography and Race: The Administration of the Death Penalty in Maryland, 1978-1999. University of Maryland Law Journal of Race, Religion, Gender and Class.

Radelet, ML and RL Akers. (1996). "Deterrence and the Death Penalty: The Views of the Experts." Journal of Criminal Law and Criminology.

Rosenbaum, Paul and Donald B. Rubin.(1983) "The Central Role of the Propensity Score in Observational Studies for Causal Effects". Biometrika, Vol. 70, No.1: 41-55

Scalia, John. (1997). "Prisoner Petitions in the Federal Courts, 1980-1996." Bureau of Justice Statistics NCJ-164615.

State of Connecticut Commission on the Death Penalty.(2003)."Study Pursuant to the Public Act No. 01-151 of the Imposition of the Death Penalty in Connecticut."

State of Tennessee Comptroller of the Treasury.(2004). "Tennessee's Death Penalty: Costs and Consequences."

Stephan, James. (2007). "State Prison Expenditures, 2001" Special report. 2004. Bureau of Justice Statistics.

Washington State Bar Association. (2007). "Final Report of the Death Penalty Subcommittee of the Committee on Public Defense."

APPENDIX A – DATA COLLECTION

The initial data about the cases included for this study are drawn from a University of Maryland study on death penalty disparities in Maryland (Paternoster, Brame, Bacon & Ditchfield 2004). The study examined about 6,000 first and second degree murders committed in the state of Maryland from August 1978 until September 1999. The initial pool of 6,000 homicides produced a universe of 1,311 death sentence eligible cases. These 1,311 cases met two criteria: 1) the state's attorney filed a notice of intention to seek the death penalty and 2) the facts of the case clearly complied with the death penalty eligible criteria. Ambiguous cases were reviewed and the recommendations of by a panel of attorneys. The initial list of homicides and the corresponding case records were collected from the Maryland Division of Corrections. Additional data on case files were provided by the Clerk of the Maryland Court of Appeals, State's Attorney offices and the Maryland Office of Public Health. However, since the study was focused on the effect of race and jurisdiction on the imposition of the death penalty, time- and cost-related variables that were crucial to our study were not included in the Paternoster data.

We identified 84 observations in the data which were retrials of the same homicide. Each initial trial and its subsequent retrial(s) were later condensed into a single observation, yielding an analytical database of 1,227 observations. After removing cases which did not result in a guilty verdict, this adapted dataset of 1,136 death eligible cases formed the initial dataset used by the UI research team.

COLLECTING DATA FROM THE MARYLAND JUDICIARY CASE SEARCH (MDJCS) DATABASE

Traditionally, Maryland counties maintained hard copy records of each criminal case file either on location with the criminal clerk's office or at the Maryland Hall of Records in Annapolis, Maryland. In the 1990s, counties began deploying automated case management systems to electronically manage newly active cases in their counties. Maintained on private computer networks, the public could access these local databases only by visiting the county clerk's office. Each of the 24 counties developed their database autonomously and the databases evolved differentially with differences in operating systems, data availability and data format. In short, case records—hardcopy and electronic—were decentralized by county and data vary across counties.

In March 2006, the Maryland Judiciary initiated an online database, the Maryland Judiciary Case Search (MDJCS), in an effort to provide public access to a centralized source of electronic case records. However, the constraints of the centralized database are identical to those of the decentralized, county-level databases. Primarily, the MDJCS is limited to cases that had some activity after the year when the county where that case was adjudicated implemented its' automated

case management system. In many cases records for cases where all activity was prior to the development of the database were either maintained in hard copy or have since been destroyed.

From the Paternoster dataset, key identifiers—case number, name, date of birth, year of case and trying county—were used as search criteria to locate electronic case dockets in the Maryland Judiciary Case Search (MDJCS) database. We observed additional variables in MDJCS that were not available in Paternoster including key dates such as arraignment, trial days, hearings, motions, petitions and requests. For each observation in Paternoster, we searched for an electronic record in MDJCS.

There was no way to determine *ex ante* whether the data contained in the MDJCS database were complete. To verify the data's accuracy, we conducted site visits to Baltimore County, Baltimore City, Prince George's County and Anne Arundel County. We compared data we had printed from the MDJCS data to data we observed in the in-house databases maintained by each county's Clerk's Office in all four of these jurisdictions. In all instances, the availability and the scope of records from both sources were found to be identical.

Many records were missing in the MDJCS database. We determined there were four explanations for the missing data: 1) only the Hall of Record in Annapolis maintained a hardcopy case file, 2) the Circuit Court Clerk's Office maintained a hardcopy file, 3) the Circuit Court Clerk's Office maintained only a docket brief of the case file, and 4) the hardcopy record had been destroyed. In the first two instances, budgetary and time constraints prevented the acquisition and inclusion of records. In the third instance, the docket brief included no usable data and, in the fourth instance, records were unattainable.

Of the 1,227 observations in the analytic dataset, 538 dockets were classified as complete, 93 as incomplete and 596 as missing. A docket was judged to be complete if it contained observable events appropriate to the full length of a case from arraignment to conclusion (typically marked by sentencing or an affirmed appeal). A docket was deemed incomplete if any phases or crucial events, such as a sentencing date, were unobservable. Dockets were concluded to be missing if the identifiers in Paternoster dataset did not produce search results or if the docket was unavailable due to the limited historical scope of the MDJCS database.

Coding Dockets

Each docket was assigned a unique identifier. Multiple dockets for the same defendant for the same case were assigned a lettered sub-identifier, e.g. 445A and 445B. In the event of overlap among dockets for the same individual – e.g. multiple dockets reporting on the same case events – the most complete docket was used or, alternatively, fragments of dockets were used to form a complete docket. Consequently, we minimized double-counting. The data coded from the dockets into the data collection instrument fell into two general categories: 1) judicial phases and 2) case identifiers. As will be further discussed in later sections, data coded into the judicial phases encompassed various binary variables and the dates and durations (in days) of arraignments,

hearings, trials, sentencing hearings, appeals and petitions further broken down into the following phases:

- Trial (guilt/innocence phase);
- Trial (penalty phase);
- Other (hearings occurring between the penalty phase and the appeals phase);
- Appeals phase;
- Post-conviction phase;

These data on event-based case information were matched, where possible, with the relevant observation in the Paternoster dataset. Differences between the two data were minimal. In cases where differences were observed, we chose the official record if it was available, and the Paternoster data if official data were not available.

PACER

Data on costs associated with the federal stages were obtained from electronic dockets located on PACER, the federal judiciary's central location for court records for the US. District Court and US Court of Appeals. Docket information was only obtained for cases which had received a death sentence. At the US District Court level, we observed the date of filing for petitions for habeas corpus, hearings, and the date decisions were handed down. At the Federal Appellate level, we observed the number of appeals filed and decided upon. Appeals which were withdrawn or dismissed did not factor into our cost analysis.

DEVELOPING TIME-BASED ESTIMATES FROM DEFENSE AND PROSECUTION SURVEY RESPONDENTS

Not all required data were contained in either the Paternoster data or in the official records. Most importantly, we sought to estimate of the differential use of resources in processing capital versus non-capital (but capital eligible) cases by including out-of-court preparation time. We collaborated with a panel of defense and prosecution counsel with experience trying capital cases to develop initial estimates of preparation time for a 'typical' no death notice case and a 'typical' death notice case at each stage of processing.

Following an initial introduction by telephone, the prosecution and defense estimates were faxed to one or more counsel in the State's Attorney's Offices and the Offices of the Public Defender, respectively, across Maryland's 24 counties. Counsel were asked to review the initial time-based estimates and provide feedback and comments as to the accuracy of the estimates. In all, 16 defense estimates were sent to 15 counties and 37 prosecution estimates were sent to 23 counties. In addition, we employed a snowball sampling technique, and solicited names of additional

respondents, who we also contacted. [18] Across all survey respondents, the only significant change from the initial estimates was the estimated number of days of voir dire, as an initial estimate drawn from the Indiana death penalty study proved to be too high for a Maryland population.

Table A1.1

Prosecution and Defense Time-based Estimates for Processing Cases

Item	Death Notice	No Death Notice
Pretrial Phase		
% of time on a case (before death notice is filed)	50%	15%
% of time on a case (after death-notice is filed)	30%	15%
% of time on a case (90 days prior to trial)	50%	25%
% of time on a case (45 days prior to trial)	75%	50%
% of time on a case (30 days prior to trial)	100%	100%
Number of attorneys assigned	2	1
Attorney time to prepare for each hearing day (hours)	12	6
Paralegal time to prepare for each hearing day (hours)	2	1
Guilt/Innocence Phase		
Attorney time to prepare for each day of voir dire (days)	3	3
Average number of days of voir dire in a "typical" case	5	2
Attorney time to prepare for each trial day (hours)	60	60
Paralegal time to prepare for each trial day (hours)	5	5
Attorney time to prepare for each hearing day (hours)	12	6
Paralegal time to prepare for each hearing day (hours)	2	1
Penalty Phase		
Attorney time to prepare for each trial day (hours)	60	
Paralegal time to prepare for each trial day (hours)	5	
Attorney time to prepare for each hearing day (hours)	12	
Paralegal time to prepare for each hearing day (hours)	2	
% of time on a case (during phase)	100%	
Post-conviction Phase		
Hours/week	40	40
% of time on a case	15%	10%
% of time on a case (two weeks prior)	40%	40%
% of time on a case (during the hearing)	100%	100%
Attorney time to prepare for each hearing day (hours)	8	8
Paralegal time to prepare for each hearing day (hours)	1	1
Appellate Phase		
Attorney time to prepare an appeal (hours)	600 (200)*	300 (100)*

Source: Staff Attorneys from the Office of the Public Defender and the State's Attorney's Office. The only difference between prosecution and defense estimates is that the defense spends about three times as much time preparing an appeal then does the prosecution. This is justified as the defense must develop grounds for an appeal, and the prosecution only has to respond to the issues in the appeal.

[18] Respondents generally requested anonymity. We received responses from attorneys who have participated in a substantial number of death penalty cases in Maryland. Given how few attorneys in absolute numbers have been involved in death penalty cases, especially among prosecutors, we can not also report response rates without violating that anonymity.

These estimates include pre-trial, guilt/innocence, penalty, appellate, post-conviction and other post-sentencing phases. During the pre-trial and trial phases, attorney preparation time for capital and non-capital cases outside the courtroom increases as the trial date approaches. We estimate preparation for an appeal in a non-capital case consumes about one-half the time of a capital appeal. In terms of post-conviction, we again estimate out-of-court preparation time increases as the post-conviction hearing date approaches. Time consumption for other post-sentencing proceedings is assumed equivalent to preparation for hearings in the pre-trial phase.

Estimates for the prosecution are identical to that of the defense except for appeals. The justification is that the prosecution spends less time responding to an appeal than the defense does because the defense must identify grounds for the appeal, while the prosecution need only respond to the particular issues raised by the defense. Days in which there was a hearing or a trial day were assumed to have taken 100% of an attorney's time. Thus, we account for, on the average, the amount of time an attorney spends each day working on a case as well as the extra time associated with observed trial events.

APPENDIX B – CONSTRUCTION OF CASE-LEVEL COST ESTIMATES

This Appendix describes how case-level estimates were constructed. A description of how Maryland cases proceed through a capital eligible case can be found in the main body of the report.

OVERVIEW

In this study, we count the opportunity cost of the death penalty, which is defined as the value of resources in their next best use. Resources take the form of capital (such as the value of court space) and labor costs (salary and wages). We estimate the value of each resource (the price) in terms of the price per unit (such as one hour of attorney time). We estimate the value of all resources paid for by Maryland taxpayers in the processing of a death eligible case. We estimate costs for each defendant, and for each stage of case processing.[19]

Costs are calculated as the product of a price of a unit of input (such as hours) and the quantity of inputs used. Thus, our basic cost equation is:

$$\text{Cost} = \text{Price of unit of input X Quantity of inputs} \qquad \text{(A2.1)}$$

Following (A2.1), we estimate the two components of cost, price and quantity, separately. For instance, we observe the price of an hour of an attorney's time, then multiply that by the number of hours spent by that attorney in each stage of case processing. The remainder of this Appendix describes the sources of the price and quantity estimates.

Each of the sections in this Appendix follows the same order of presentation.

PRE-TRIAL/ TRIAL/ PENALTY PHASE

Defense Cost

The Office of the Public Defender's (OPD) primary mission is to provide legal representation to indigent defendants in the State of Maryland. The responsibility of establishing and funding county-level Offices of the Public Defender rests, not on the individual counties, but under the Executive branch of the Government of the State of Maryland.

---

[19] Because we are comparing trial costs of capital cases and non-capital cases, we dropped from our comparison group cases which were acquitted. Given that these cases could not possibly receive the same cost inputs as the treatment group, including them would have deflated the cost of the comparison group and artificially raised the differential cost of death penalty as compared to cases which did not receive the death penalty.

Wages

Position salaries are determined at the state level. In assigning value to time, we estimate the hourly wage of OPD staff, taking into account salaries, fringe benefits and days of leave. Staff salaries for county-level OPD offices were determined from the Maryland Department of Budget and Management's (DBM) State Salary Plan. The State Salary Plan lists title, class code and salary information in 2007 dollars for all state job classes. The annual salary for OPD staff was computed as the mean of the minimum and maximum salary for each position. These computed salaries correspond almost identically to salaries at the midpoint of the corresponding pay grades for each position listed in the State of Maryland Standard Salary Structure. The District Public Defender's salary is approximately $93,672.00, $72,157.50 for the Assistant Public Defender and $40,516.00 for the Paralegal.

Table A2.1

Estimated Salaries of Office of the Public Defender Staff

Position	Estimated Annual Salary
Dist. Public Defender	$93,672
Asst. Public Defender II	$72,157
Paralegal II	$40,516

Source: Maryland Department of Budget and Management (DBM) State Salary Plan

Following convention, fringe benefits are assumed equivalent to 30% of annual salary for all positions.[20] Fringe benefits represent a direct cost to the employer (in this case the State of Maryland) and include Social Security, Health Insurance, Pension Retirement, Deferred Compensation Match, Workers Compensation and Unemployment Insurance. Total estimates are $121,773.60 for the District Public Defender, $93,804.75 for the Assistant Public Defender and $52,670.80 for the Paralegal.

Table A2.2

Total Estimated Salaries and Fringe Benefits of Office of the Public Defender Staff

Position	Estimated Annual Salary and Benefits
Dist. Public Defender	$121,774
Asst. Public Defender II	$93,805
Paralegal II	$52,671

Source: Maryland Department of Budget and Management (DBM) State Salary Plan

[20] This estimate of 30% is close to the Department of Budget and Management's (DBM) FY 2007 estimate of a fringe rate of 33% for the typical state employee in the state personnel management system.

To estimate the hourly wage rate to be used in the final analysis, an estimate of the average number of workdays in a given year must be generated. Estimates of additional annual days of leave were developed from the annual leave policies outlined by the Maryland DBM. Leave time for state employees is comprised of annual leave, personal leave, holiday leave and sick leave. Annual leave can be used for any purpose and up to 50 days of annual leave can be carried over from one year to the next. Since annual leave varies directly with seniority, we used the mean allotment, 17.5 days. Personal leave cannot be carried over into a new calendar year and was excluded from out estimate. There is no limit to the number of sick days an employee can carry over into a new calendar year, so we included the full allowance of 15 days per year. A minimum of 11 days of holiday leave also figure into the total estimate. Our estimate of total leave, then, is 43.5 days. Given the seniority of staff in the study, this estimate of 43.5 days comports reasonably well with the DBM's estimate of 38 days of total leave for the typical state employee.

Table A2.3

Estimated Annually Allotted Days of Leave for Maryland State Employees

Leave Type	Allotted Days
Annual	17.5
Holiday	11
Sick	15
Personal	-

Source: Maryland Department of Budget and Management (DBM) Annual Leave Policy

Even if OPD staff do not take their full allotment of leave days, these days remain an indirect cost to the employer ($6,716 for the typical Maryland state employee in 2007), as outlined in the DBM 2007 Annual Personnel Report. Cook justifies an identical approach on the basis that employees will eventually use their leave at retirement if not sooner (1993: 41).

Accounting for 43.5 days of leave and 104 weekend days, we estimate 217.5 work days in an average year. Put differently, this estimate is equivalent to a 43.5-week year or a 1,740-hour year, assuming an eight-hour work day.

Table A2.4

Estimated Annual Work Time for Maryland State Employees

Unit	Amount
Days	217.5
Weeks	43.5
Hours	1,740

Source: Maryland Department of Budget and Management (DBM) Annual Leave Policy

Though interviews with attorneys involved in death cases suggest that their work often spans more than 40 hours per week especially around trials, attorneys are not eligible for overtime pay and, as such, a 40-hour work week is assumed in all cost analyses. Attorneys note that even in weeks where they are working 40 hours or more on death case, they still attend to other cases. Thus, when we interview attorney and ask them to assign percentages of time worked to cases, we ask them what proportion of 40 hours per week is spent on death cases at each stage of processing. Calculation of the hourly rate is straightforward:

Hourly wage rate = (annual salary + benefits) / 1740 hours

For staff in the county-level Offices of the Public Defender we estimate hourly wage rates at $69.98 for a Public Defender, $53.91 for an Assistant Public Defender and $30.27 for a Paralegal.

Table A2.5

Estimated Hourly Wage Rates for Office of the Public Defender Staff

Position	Hourly Wage Rate
Dist. Public Defender	$70
Asst. Public Defender II	$54
Paralegal II	$30

Source: Maryland Department of Budget and Management (DBM) State Salary Plan

Estimating Defense Quantities (Time Spent on Capital Eligible Cases)

Attorney time associated with an individual case proved the most difficult item to quantify. There are no time logs for either the prosecution or defense that are publicly available. Other studies have dealt with this problem by using survey data or interviews with attorneys to estimate, on average, the amount of time dedicated to a case (Cook 1993; Washington 2007). We developed a survey for attorneys to estimate time spent on these cases that could be linked to observable administrative data. In the electronic dockets, we observe both event data (number of hearings, number of trial days) and duration data (length of a phase). The survey queried attorneys with death penalty case experience about time spent on a case in each of these stages of processing. These estimates account for, on average, the amount of time an attorney spends each day working on a capital eligible case, as well as additional time associated with observable court events. A complete description of the survey can be found in **Appendix A**.

We estimate that attorneys involved in death penalty cases spend more time on those cases in all phases of pre-trial and the trial phase than would have been the case for a no death notice case. Importantly, survey respondents estimated that the number of attorneys dedicated to cases where a death sentence is being sought is twice (two) the number assigned to a no death notice case (one). For many court events, about twice as much time is spent in preparation. Respondents, however,

report that the amount of time preparing for voir dire preparation and a day of trial is identical in death notice and no death notice cases.

Table A2.6

Prosecution and Defense Time-based Estimates for Processing Cases in the Pre-trial and Trial Phases

Item	Death Notice	No Death Notice
Pretrial Phase		
% of time on a case (before death notice is filed)	50%	15%
% of time on a case (after death-notice is filed)	30%	15%
% of time on a case (90 days prior to trial)	50%	25%
% of time on a case (45 days prior to trial)	75%	50%
% of time on a case (30 days prior to trial)	100%	100%
Number of attorneys assigned	2	1
Attorney time to prepare for each hearing day (hours)	12	6
Paralegal time to prepare for each hearing day (hours)	2	1
Guilt/Innocence Phase		
Attorney time to prepare for each day of voir dire (days)	3	3
Average number of days of voir dire in a "typical" case	20	2
Attorney time to prepare for each trial day (hours)	60	60
Paralegal time to prepare for each trial day (hours)	5	5
Attorney time to prepare for each hearing day (hours)	12	6
Paralegal time to prepare for each hearing day (hours)	2	1

Source: Staff Attorneys from the Office of the Public Defender and the State's Attorney's Office

One critical difference between cases that receive a death notice and cases that do not receive a death notice occurs in the period before a death notice is filed[21]. Survey respondents report that the prosecution must spend additional time with these cases to determine whether a death sentence will be sought, and the defense works intensely to prevent the death notice filing. In death eligible cases where the death notice is not sought, we are unable to observe the amount of additional time spent by defense counsel to fight a death notice filing and the prosecution to prepare a death notice filing . Thus, in this area we likely underestimate the costs of the death penalty.

Prosecution Cost

The State's Attorney's Office (SAO) is responsible for prosecuting violations of Maryland State law within the geographical boundaries of its respective county. Unlike the Office of the Public Defender, policies dictating SAO salaries differ slightly for each county. County Councils define and approve SAO salaries, setting them directly as a specified amount or indirectly as a percentage of a District Court judge's salary.

We estimate the hourly wage of SAO staff by taking into account salaries, fringe benefits and days of leave using a process that is identical to the estimation strategy for OPD staff. However, because these salaries do not fall under the State Salary Plan, SAO wages were estimated from the Anne Arundel County Class and Compensation Plan. Again, we compute salaries as the mean of the minimum and maximum salary for each position and assume fringe benefits equivalent to 30% of annual salary. Total estimates designate $177,620.30 for a State's Attorney, $101,348.00 for an Assistant State's Attorney and $54,400.45 for a Paralegal.

Table A2.7

Total Estimated Annual Salaries and Fringe Benefits of State's Attorney's Office Staff

Position	Estimated Annual Salary and Benefits
State's Attorney	$177,620
Asst. State's Attorney	$101,348
S/A Paralegal	$54,400

Source: Anne Arundel County Class and Compensation Plan

Using the same estimates of 43.5 days of leave and 1,740 work hours per year, we estimate SAO hourly wage rates at $102.08 for a State's Attorney, $58.25 for an Assistant State's Attorney and $31.26 for a Paralegal.

[21] It should be noted that we were unable to observe the date of a death notice filling in all of our sample. In the event that we were able to observe a capital trial and the data in Paternoster dataset indicated a death notice, we used the average length of time from arraignment to the filing of a death notice to estimate the approximate date of a death notice filing. These estimates were made in 37 cases.

Table A2.8

Estimated Hourly Wage Rates of State's Attorney's Office Staff

Position	Hourly Wage Rate
State's Attorney	$102
Asst. State's Attorney	$58
S/A Paralegal	$31

Source: Anne Arundel County Class and Compensation Plan

As noted above, with the exception of differences in the appeals process, survey respondents report, on average, that there were no substantial differences between the defense and prosecution in the amount of time dedicated to a death notice case in the pre-trial and trial phases. Thus, the same estimates are used for prosecutors as for the defense. Within each type of case – death notice and no death notice -- differences in cost between the prosecution and defense are due to differences in wage rather than intensity of preparation.

One omission from our hourly estimates is the time contribution of investigators and local law enforcement. A federal study suggests that a large amount of time is spent by law enforcement investigators aiding the prosecution in developing capital cases. This cost may be the main driver for their findings that prosecution costs drive attorney costs in the trial phase of death penalty cases (Subcommittee on Federal Death Penalty Cases 1998). We were unable to directly observe these costs.

Expert Witnesses, Specialists

Most studies conclude that the cost of expert testimony is a significant part of the overall cost to the death penalty. Because we were unable to observe the cost of expert witnesses, we estimate this cost based upon a federal study of the death penalty (1998). This study estimates the percentage of overall cost which can be attributed to reimbursements to experts, which includes forensic science experts, experts in interpretation or authentication, mitigation specialists, jury consultants, psychologists, and psychiatrists. Overall, 19% of payments for representation went to services for experts and investigators for capital cases. In non-capital cases death eligible case, 16.2% of total costs were spent on experts. We apply our estimates to the cost of attorney fees for the guilt and penalty phase.

We note that it is possible that in the post-conviction stage of a case, these same specialists will again be called upon for expert guidance, this time by a different set of defense attorneys. However, interviews with attorneys in the field suggest that a common grounds for a post-conviction petition for relief is inadequate counsel, the proof being that experts were under-invested in the original trial and that mitigating circumstances were not presented. Thus, we assume that the total expenditure on experts can be estimated by assuming that all expenditures will occur during the original trial.

We note that it is possible that a re-trial will occur in a case, and that these experts will again be called upon for expert guidance. In the event of a retrial, we did add the additional costs.

Courtroom Costs

In addition to labor costs, we also estimate the value of the courtroom. The opportunity cost of the court room is the value of the space in its next best use, e.g. the rental of that space for another purpose. The rental value of one day of a courtroom is estimated by the prevailing market rental rates for an average square footage of Circuit Court space appropriate for trying a murder case.

To calculate the square footage of relevant courthouse facilities we solicited estimates of the size of court space from the Administrative Office of the Courts, the Department of Public Works and/or the Department of General Services in five counties in our sample. Specifically, we requested the square footage of a typical courtroom, jury room, judge's chamber and jury pool room. Of the five counties surveyed, only Baltimore City and Prince George's County did not process our request. Taking the average square footage of each facility, we estimated 1,534.3 square feet for a typical courtroom, 341.3 for a jury room, 541.7 for a judge's chamber and 4,458.7 for a jury pool room.

Table A2.9

Estimates of Circuit Court Facilities (sq ft)

Facility	Square Feet
Courtroom	1,534
Jury Room	341
Judge's Chamber	548
Jury Pool Room	4,459

Source: Administrative Office of the Courts, Department of Public Works, Department of General Services

To assign value to courthouse facilities, we used a seven year average (in 2007 dollars) of market rates for class B office rental space in suburban Maryland.[22] Applying the rental rate of $27.09 per square foot to the average area of the four relevant Circuit Court facilities, we calculate the annual rental value for each facility. Assuming court is in session 240 days a year, we estimate the following daily rental values for each facility: $173.19 for a courtroom, $38.53 for a jury room, $61.14 for a judge's chamber and $503.27 for a jury pool room.

[22] These market rates were drawn from several fourth quarter reports published by Grubb & Ellis, a commercial real estate firm specializing in the metro area.

Table A2.10

Rental Value of Circuit Court Facilities (sq ft)

Facility	Daily Rental Value
Courtroom	$173
Jury Room	$39
Judge's Chamber[23]	$61
Jury Pool Room	$503

Source: Grubb & Ellis Research. *Office Market Trends Washington, DC Metro, 4th Quarter (2002-2007)*

To calculate courtroom usage, we assume one day of court usage per trial day, one day of court usage per hearing day, and one day of court usage per full day of voir dire. For trial days, we assumed that the jury room and the court room were used. For hearing days, we assumed the courtroom was used. For days of voir dire we assumed that the jury pool room and courtroom were used.

Judge Costs

To calculate per day costs of the judge and Circuit Court judicial staff, we follow the same general approach as was used to estimate fully loaded attorney wages. We assume fringe benefits are 30% of annual salary, judges receive 43.5 days of annual leave and judges work a 1,740-hour year. We use the annual salary of $134,352 for a Circuit Court Judge listed by the Maryland Judiciary to compute the salary-benefits total for that position. Salary estimates for other Circuit Court staff—court clerk, law clerk, court reporter and bailiff (deputy sheriff)--are again computed from the Anne Arundel County Class and Compensation Plan. We estimated hourly wage rates for Circuit Court staff at $100.38 for a Circuit Court Judge, $22.75 for a Court Clerk, $32.15 for a Court Law Clerk, $39.17 for a Court Reporter and $34.78 for a Deputy Sheriff serving as Court Bailiff.

Table A2.11

Estimated Hourly Wage Rates of Circuit Court Staff

Position	Hourly Wage Rate
Circuit Court Judge	$100
Court Clerk	$28
Court Law Clerk	$32
Court Reporter	$35
Court Bailiff	$35

Source: Maryland Judiciary; Anne Arundel County Class and Compensation Plan

[23] Because we were unable to observe the square footage of the judge's chamber in the Court of Appeals, we left this cost out of our calculation of courtroom rental costs for all stages of a case. On the average, one room is 341 square feet and would have amounted to an additional $39/day.

We calculate cost of judges for trial days as well as hearing days in the guilt and penalty phase and assumed 8 hour workdays. Each trial day and hearing day was given one full day of judge time.

Jury Costs

Jury costs were estimated as the opportunity cost of one hour of an average juror's time. In other words, the opportunity cost is the foregone income of a juror. In economic analyses, the value of one hour of an adult's time is generally assumed to be equal to an hour of wages. Using state-level data from the Bureau of Labor Statistics, we calculated the average hourly earnings of a Maryland citizen 18 years or older. This rate reflects employed as well as unemployed persons and averages to approximately $12.59/hr.

This hourly rate was then applied to the process of jury selection. Using data from our interviews and surveys, we concluded that the average length of voir dire for a capital case is five days and two days for a non-capital case. For capital cases, semi-structured interviews with judges and attorneys report that 800 individuals fill out the juror-selection survey and estimate an hour of time per individual. We estimate that 175 potential jurors appear for jury selection and each spends, on average, 2.5 days in the juror pooling process (we assume that each juror is not present for all the days of voir dire). Twelve jurors and at least two alternate jurors are selected from the pool of 175 prospective jurors. We assume an opportunity cost of eight hours per trial day.

For non-capital cases, we assume that 120 individuals complete the juror-selection survey (one hour of time). We estimate sixty jurors appear for one day of jury pooling (we assume not all prospective jurors are present for all two days of voir dire) and the selected fourteen are present for all trial days, assuming eight-hour trial days.

Retrials and Pleas

In the event of a retrial of either the entire guilt phase or the sentencing (penalty) phase, we apply the same methods used for calculating the original trial costs.

In the event of a plea, we also apply the same estimates used for calculating original trial costs. That is, we increase the amount of time an attorney spends on a case the same way we would as a case approaches trial. We assume that an attorney treats a case as though it will go to trial until the moment of a plea. For trials in which the actual timeline did not allow for our estimation timeline (i.e. the phase was less than 90 days or the death notice filing date occurred within 90 days of the trial), we used only the applicable time percentages to the actual number of days. For example, if a case had a pretrial phase of 50 days, we used the attorney time percentage 90 days out (50%) for 5 days, 45 days out (75%) for 15 days, and 30 days out (100%) for 30 days.

PENALTY PHASE COSTS

The penalty phase is unique to cases where the death penalty is sought. In this phase, mitigating circumstances are often presented, and a defendant may elect to be either sentenced by a jury or by a judge. Costs were calculated as follows:

Attorney Costs

Wage rates for defense and prosecution attorneys for the penalty phase are identical to the hourly wage rates employed in the guilt/innocence phase. Again, survey responses were used to estimate the time attorneys spend preparing for a day of trial or a hearing day in the penalty phase. Typically, these estimates are the same as for the trial phase.

Table A2.12

Prosecution and Defense Time-based Estimates for Processing Cases in the Penalty Phase

Item	Death-Notice	No Death-Notice
Attorney time to prepare for each trial day (hours)	60	
Paralegal time to prepare for each trial day (hours)	5	
Attorney time to prepare for each hearing day (hours)	12	
Paralegal time to prepare for each hearing day (hours)	2	
% of time on a case (during phase)	100%	

Source: Staff Attorneys from the Office of the Public Defender and the State's Attorney's Office

One difference between the trial and penalty phase is that we assume that attorneys spend 100% of their time working on the case during this phase (which we estimate to last an average of 13.8 working days). Thus, in order to avoid double counting, time associated with the penalty phase was calculated as the total number of hours in the phase minus trial and hearing day hours and preparation hours for trial days and hearing days. Any remaining hours were then assumed to also have been spent working on the case.

Experts, witnesses, specialists

Our method of calculating specialists was based upon the total expenditure of the trial and penalty phase combined. For a full explanation of how costs were calculated, see the section on experts and witnesses in the trial phase chapter. As a note, in tables where costs are broken down by phase, since there was no way to differentiate costs associated with trial versus penalty phase, we added the total cost of experts to the trial phase cost.

Courtroom Costs

Courtroom costs were calculated using the same method as the trial phase.

Judge Costs

Here, we employ the identical Circuit Court staff wages used in the guilt/innocence phase. In the penalty phase, the defendant has the right to elect between sentencing by a jury or sentencing by a judge, and we were able to observe these events in our data. Where sentencing was done by a judge, we calculated cost the same as the cost of the judges' time during the trial days. For the penalty phase, we were able to observe instances in which sentencing was conducted by a judge instead of a jury and accounted for this cost as well. We calculated judge costs the same whether or not the defendant elected to be sentenced by a judge (we assume no extra time on the judge's part if he is doing the sentencing rather than a jury). Since the number of trial days were similar regardless of whether one was sentenced by a judge or by a jury, cases in which a defendant elected to be sentenced by a jury were more expensive.

Table A2.13

Sentences in Capital Cases

Sentenced by:	Count	Trial days
Judge	15	2.93
Jury	76	3

Source: Compiled from case dockets collected from the Maryland Judiciary Case Search (MDJCS) database

Jury Costs

Jury costs were calculated using the same method as was used for the trial phase, although, in the penalty phase the cost of voir dire was not included. This is because, generally, the same jury that sat in the guilt phase will sit in the penalty phase. However, in the event of a retrial, jury costs of voir dire were calculated, using the same assumptions as in the trial phase.

Handling Retrials, Pleas

There were 13 instances in which an offender was remanded for a retrial of the penalty phase only. For these events, the average length of a phase was much longer, an average of 292 working days. In these cases, we calculated time devoted to a case using the same percentages as the trial phase, 30 % in the beginning, 50% 90 days out, 75% 45 days out, and 100% 30 days out. There were only two cases in which a death notice was filed, a plea was made, and a penalty trial was still held. These were calculated the same as the typical penalty phase cases, using the plea as the start date of the phase.

COST OF CASE REVIEW

We differentiate costs associated with state-level post-sentencing proceedings into costs associated with appeals (both to the Court of Appeals and the Court of Special Appeals in non-capital cases) and costs associated with petitions for post conviction relief.

Post Conviction Costs

Costs associated with adjudicating the post-conviction phase are similar to costs associated with other phases. The prosecuting attorney represents the State. However, because post-conviction petitions are often based on the claim of inadequate counsel, the state hires private attorneys to represent the defendant. These attorneys then file for reimbursement. We assume that all defense attorneys in this stage are private.

Attorney time

Survey data indicated that attorney time on a case during the post conviction phase differs from time during the trial or sentencing phase. Since this phase often spans many years, from the day that a petition is filed to the day a decision is handed down, attorneys estimate they spent, on the average, 15% of their time on a case during this process. However, in the weeks before a hearing on the petition, time increases to 40%. While we did inquire as to the difference in time commitment in adjudicating a capital versus a non-capital case, estimates of time exhibit no major differences. One should note that at this stage a sentence has already been handed down. Thus, our treatment group has now become those sentenced to death (rather than those who received a death notice). Thus, death notice cases which did not receive a death penalty now use the same attorney time estimates as do no-death notice cases.

Table A2.14

Prosecution and Defense Time-based Estimates for Post-conviction Phase

Item	Death Penalty	No Death Penalty
Hours/week	40	40
% of time on a case	15%	10%
% of time on a case (two weeks prior)	40%	40%
% of time on a case (during the hearing)	100%	100%
Attorney time to prepare for each hearing day (hours)	8	8
Paralegal time to prepare for each hearing day (hours)	1	1

Source: Staff Attorneys from the Office of the Public Defender and the State's Attorney's Office

Many petitions for post conviction relief are not filed by attorneys but by the defendants themselves. Consequently, many are withdrawn or dismissed and the costs associated with such petitions are the opportunity costs of the defendant. However, because defendants are incarcerated,

we assume their opportunity costs are zero. Because we were unable to observe when a petition was filed by an attorney and when it was not, we made the following assumptions based on interviews with attorneys with experience in death penalty cases:

- All death penalty cases are represented by an attorney;
- Cases in which a death sentence was handed down and subsequently revoked will continue to be represented by an attorney during the post conviction process
- Costs associated with petitions which do not make it to a hearing will be assumed at zero.
- All petitioners which are heard have representation.

Specialists

Petitions for post conviction relief can generate large costs in capital cases. Since one of the main claims is inadequate counsel, new counsel typically has to recreate the entire case, including hiring mitigation specialists, in order to prove that an unsatisfactory job by former counsel neglected important mitigating factors which may have affected sentencing. While it was impossible to directly observe costs associated each individual case at this phase, one must still account for these costs. A difficulty we encounter in our technique of estimating costs of experts, however, is that of double counting costs- that is counting high costs of specialists in both the guilt and penalty phase. It is a logical assumption that claims of inadequate counsel which are granted a hearing most likely did not have the specialist expenditures associated with an adequately represented case. Based on this assumption, we believe that the estimated mitigation expenditure (19% of total attorney cost for capital cases) denotes the expenditure of a typical, well-represented case. Thus, if that amount is $50,000 for a case, if only $20,000 is spent in the trial and penalty phase, then $30,000 will be spent in post-conviction phase. Thus, the expenditure calculated in the trial phase is seen as the total expenditure of specialists, across all phases. This is admittedly a conservative assumption that we test in our sensitivity analysis.

Courtroom costs

Courtroom Costs were only calculated for the time spent in hearings. Each hearing day was estimated as one full day of use of the courtroom using the same methods and estimates outlined above.

Judge Costs

In our interviews with judges with experience in capital cases, the consensus was that during the trial and penalty phases, judges spend little, if any, time on a case outside of the courtroom. Thus, we estimate only judge costs for hearing days. One full day of judge time was assumed for each hearing day.

For post-conviction, we employ the same hourly wage rates for judicial staff: $100.38 for a Circuit Court Judge, $22.75 for a Court Clerk, $32.15 for a Court Law Clerk, $39.17 for a Court

Reporter and $34.78 for a Deputy Sheriff serving as court bailiff. The total judicial labor cost for a full-day hearing is $1,833.88.

Appellate Costs

Attorney time

Attorney time associated with appeals was calculated as the average number of hours necessary to draft an appeal, rather than a percentage of attorney time dedicated to a case throughout a phase. This assumption was made after interviews with public defenders and prosecutors indicated that the majority of work was done filing the appeal, rather than in the time between when the appeal was filed and when a decision was handed down. Attorney hours associated with appeals was one of the few areas in which we were told that there is, on the average, a difference in preparation time between the defense and prosecution. Because the defense has the burden of drafting the appeal and the prosecution responds, we were told that the prosecution devotes less time to this particular stage. Consequently we have estimated attorney time in the appeals phase as follows:

Table A2.15

Prosecution and Defense Time-based Estimates for Appellate Phase

Item	Death Penalty	No Death Penalty
Attorney time to prepare an appeal (hours)	600	300

Source: Staff Attorneys from the Office of the Public Defender and the State's Attorney's Office

Courtroom Costs

In estimating the value of an appellate-level courtroom, we used an approach similar to that of estimating value at the Circuit Court level. The Maryland Administrative Office of the Courts provided an estimate of 2,000 square feet for a courtroom at the appellate level, resulting in an estimate of $225.75 in rental costs per day.

Judge Cost

We continued our assumptions of fringe benefits at 30% of annual salary, 43.5 days of total leave and a 1,740-hour year to estimate hourly wage rates to calculate wage rates for judicial staff of the Special Court of Appeals and the Court of Appeals. We adopt Appellate Judges' salaries listed by the Maryland Judiciary and the previous wage estimate of a Circuit Court Law Clerk for the Appeals and Special Appeals Clerks. Accordingly, we estimated hourly wage rates as follows: $106.13 for a Special Appeals Associate Judge, $108.37 for a Special Appeals Chief Judge, $27.52 for an Appeals courtroom clerk, $128.77 for a Court of Appeals Chief Judge and $114.57 for a Court of Appeals Associate Judge.

Table A2.16

Estimated Hourly Wage Rates of Appellate and Special Appellate Staff

Position	Hourly Wage Rate
Special Appeals Assoc. Judge	$106
Special Appeals Chief Judge	$108
Appellate Law Clerk	$28
Appeals Chief Judge	$129
Appeals Assoc. Judge	$115

Source: Maryland Judiciary; Anne Arundel County Class and Compensation Plan

For the Court of Special Appeals, we assumed a three judge panel composed of the chief judge and two associate judges. For the Court of Appeals, we assumed all seven judges are involved in handing down a decision. In both instances, we accounted for the hourly time of one courtroom clerk. Assuming an eight-hour day, the labor cost of judicial staff of a day in the Court of Special Appeals is $2,785.25 and $6,749.85 for a day in the Court of Appeals.

For appeals, we assumed that all first appeals in non-capital cases go to the Court of Special Appeals and attribute one full day of judge time per appeal filed. While this amount of time fluctuates greatly with the strength of the appeal and severity of the case, we believe that on the average, our assumption holds. For the second and subsequent appeals for non-capital cases as well as all state-level appeals for capital cases, we used the hourly rate of judges at the Maryland Court of Appeals level. Similarly, we assume one full day of judge time per decision handed down.

Federal Costs

Once an appeal for post conviction is denied, the defendant may file for habeas relief in the federal court. Costs associated with the federal level can be broken down into Federal Habeas Petitions and Federal Appeals.

Judge Cost

Hourly wages for the Judges in the US District Court- 4th circuit and US Court of Appeals were calculated using the same estimates as above. It was assumed for the US District Court, 1 judge was involved in handing down a decision and for the US Court of Appeals, it involved a panel of 3.

Information on costs associated with the federal stages was obtained from electronic dockets located on PACER, the federal judiciary's central location for court records for the US. District Court and US Court of Appeals. Docket information was only obtained for cases which had received a death sentence. At the US District Court level, we observed the date of filing for petitions for habeas corpus, hearings, and the date decisions were handed down. At the Federal Appellate

level, we observed the number of appeals filed and decided upon. Appeals which were withdrawn or dismissed did not factor into our cost analysis.

While we were unable to collect docket data at the federal level for our control group (those with no death sentence), we estimated the probability of a case proceeding to each federal stage. In addition, we estimated the cost of adjudication of a non-capital case at the federal habeas and federal appeal level. We then distributed this expected cost amongst our no death sentence group. The data we used to create these estimates are those reported by the Bureau of Justice Statistics in their report on petitions to the federal court (Scalia 1997), which reports data on the rate of capital and non-capital petition filing on a state by state basis. Scalia also estimates the average length of time between a filed petition and a decision, differentiated by capital and non capital cases; the percentage of petitioners who have representation rather than represent themselves; and, the rate petitions are dismissed. This study was done over the years 1980-1996. All these data were used to determine the expected cost of a petition for federal habeas or a federal appeal for non-capital cases.

Federal Habeas

According to the Bureau of Justice Statistics, 928 petitions were filed in 1995, an average of 43/1000 inmates. Once we accounted for the percentage that were adjudicated by the US District Court (43%) and the percentage that were represented by counsel (12%), only 2/1000 inmates were represented by counsel and had their petitions adjusted by the US District Court. Given our sample of 509, this resulted in one case likely to reach the level of federal habeas.

The average length of time for cases where inmates were represented by counsel was 825 days, 659 working days. Based on interviews, we assumed attorneys spent on the average 15% of their time working on the case. Thus, we calculated the expected cost of a case as the expected attorney cost as well as the expected cost of judges' time in adjudication. The attorneys' cost was applicable to the one likely adjudicated case with counsel, the judge costs were applicable to 9 likely adjudicated cases, with or without counsel. We estimated one day of judge time per decision.

Because we were unable to associate the cost of the federal habeas stage to a particular non-capital case, the total expected cost was dispersed evenly across all cases. While this does not allow for variation, we do not believe that this low cost per case will have any real impact on results.

Federal Appeals

Only about a quarter (23.7%) of cases filed in US district courts are ever appealed to the US Court of Appeals. Given this low percentage and our sample size, the costs associated with this phase for our control group were negligible and left out of the sample.

Additional Costs

There were some hearings we were unable to allocate to any specific phase. To account for these, we tallied the number of "unknown" hearings and calculated their costs using the same estimates as a trial hearing.

Cost of Prison

Prison costs were calculated using information from the Maryland Department of Public Safety and Correctional Services. Budget books available for 2002-2006 years provide information on cost for every correctional facility in the state. Annual costs for Maryland House of Correction - Jessup Region were used as an estimate of incarceration costs for those not sentenced to death row (around $30,000 in 2006). Costs for Maryland's death row were taken from the same data source. All costs for the given period were converted into 2007 constant dollars and the change in cost over this time period was used to estimate the real prison-specific inflation rate (2.1%) above and beyond the rate of inflation. According to the Bureau of Justice Statistics, inmate medical care totaled approximately 12% of operating expenditures . To account for the fact that health care costs rise at different, presumably higher rates, 12% of the incarceration costs were inflated at different rate. Past prison costs beginning from 2007 were deflated at a rate of 2.1%. Future cost costs were inflated at a rate of 2.1% to account for real prison-specific inflation and were subsequently discounted at a rate of 5% to account for time value of money, the assumption being that states can reserve money today that will be needed in the future and receive a reasonable rate of return on that investment, a rate we assume, for now, to be 5%.

In order to determine the amount of time that prison costs accrue for each inmate in our sample, it was necessary to estimate two pieces of data – the expected length of each inmate's natural life and the expected length of an inmate's sentence if that sentence was not death or life without the possibility of parole. Since data on the ages of death for those prisoners who died in custody were not available and because the majority of individuals in our sample are currently living, it was necessary to estimate a counterfactual age of death for each inmate. While the Bureau of Justice Statistics' Death in Custody Reporting program records the ages and manners of death in custody for all deaths occurring in the nation's prisons, these data were insufficient to estimate counterfactual ages of death for our sample for two reasons. First, as the majority of prisoners in state and federal prisons do not die in custody and, instead are released prior to death. As a result, mean ages of death in custody do not reflect an unbiased sample of ages of death among the prison population. Second, as individuals in our sample – all convicted murderers – serve longer sentences than the average prisoner, compounding the likelihood that their death will occur while in custody.

Unfortunately, while extant research does not explicitly estimate life expectancy for the prison population, data on age-specific mortality rates and life expectancy are available for the general population. The National Center for Health Statistics provides estimates of life expectancy as well as age-specific mortality rates for the general population groups, estimated separately by race and gender. Life expectancy in prison was modeled in three stages. First, life expectancy was linked to mortality rates for the general population via a simple OLS regression of life expectancy on mortality rates. Next, using linear transformations of in-prison race, gender and age-specific mortality rates to mortality rates in the general population calculated by cite, we calculated in-prison mortality rates for each age, by race and gender groups. Finally, in-prison life expectancy was estimated by regressing life expectancy for the general population on in-prison mortality rates. The model was specified as a

log-log relationship between prison life expectancy and national life expectancy and was estimated separately for each gender and race for age group, for ages 17-65. Finally, the fitted values from this regression model were estimated for each member of our sample, yielding an expected age of death.

Death is only one means of ending one's tenure in prison. The other means of doing so is by serving out the entirety of one's sentence or via parole or early release. In order to estimate an expected length of time served in prison, it was first necessary to generate an expected length of sentence served. Sentence (in years) available in the dataset used by Paternoster et al (1999) was multiplied by 54%, the average length of sentence served for a violent crime in Maryland (cite) and an estimated year of release was created. Next, the expected year of release was compared to the expected year of death and, for each inmate in the dataset, the minimum of these two numbers – the expected year of exit from prison – was taken. Finally, the year of entry into prison was subtracted from the expected year of exit from prison, yielding the amount of time over which prison costs accrued or are expected to accrue for each offender. The one exception to this calculation concerns individuals who, at one time or another, were on Maryland's death row. For executed inmates, actual ages of death were substituted for expected ages of death in order to account for savings in lifetime prison costs associated with execution. Likewise, for inmates currently on death row, an expected age of exit from death row was calculated by taking a weighted average of the mean time until execution multiplied by the probability of execution and the mean time until leaving death row multiplied by the probability of leaving death row. Upon leaving death row, inmates were assumed to accrue business-as-usual prison costs until their forecasted date of death or release.

Cost of Healthcare

The extant literature suggests that the increasing cost of health care for aging offenders is a significant cost associated with life without parole (Goodpaster 2002). Increases in the cost of healthcare are driven by two factors: real growth in healthcare costs over time and individual-level increases in costs associated with aging. Because data on per capita healthcare expenditure by age-group was not readily available for Maryland, age-specific prison healthcare costs calculated by an Indiana study of the death penalty were used (Goodpaster 2002). A comparison between the national average used by Indiana and Maryland suggests similar per capita annual healthcare costs that may slightly overestimate Maryland-specific healthcare costs (Stephan 2001; Stephan 1996). Since Indiana's estimates only included costs for ages 30-75, costs for younger inmates were estimated as the same as that of the 30-year-old cohort, and costs of older inmates were estimated using the average rate of increase in healthcare costs for 70-75 year olds. Healthcare costs estimated in Goodpaster (2002) were transformed into 2007 constant dollars, and past expenditures were calculated by deflating these costs by the estimated real rate of increase in healthcare costs . This rate (2.3%) was calculated as the average of the historical average excess cost growth for Medicare and Medicaid as given by the Congressional Budget Office (Orszag 2008). Future costs were projected by first inflating costs for the real rate of increase in healthcare costs and then by deflating

this cost by a 5% discount rate to account for the time value of money. In order to avoid double counting healthcare costs and prison costs, the estimated percentage of prison costs attributable to healthcare costs were subtracted from the total prison costs. This percentage was estimated at 12% based on the national average (Stephan 2001). Finally, lifetime healthcare costs were estimated for each inmate based on their age of entry into prison and their expected age upon exit.

Costs of the Office of the Public Defender, Capital Defense Division

As a statewide office established in 1988, the Capital Defense Division coordinates the delivery of legal defense services, arranges for experts and advises counsel in capital cases. However, the Division's work is not restricted solely to cases in which the prosecution files a death notice. The Division expends much of its efforts in "convincing the State pretrial that a notice to seek a sentence of death should not be filed because it did not satisfy legal criteria or because it was not warranted despite technical eligibility" (Office of the Public Defender 2006, 124). As a result, the total number of death notice cases "does not appear to accurately represent the potential workload involved in handling these complex matters" (Ostrom, Kleiman and Ryan 2005, 112).

Accordingly, we consider the cost of the Division as a cost of capital punishment for all capital eligible cases, whether or not the prosecution eventually files a death notice. Employing State of Maryland Operating Budget Details, we record total expenditures (in 2007 dollars) over a period of five years and subtract out technical and special fees to avoid double-counting the cost of specialists and expert witnesses. We take the inflation-adjusted, five-year annual average of Division expenditures, $563,575.46, and apply it to the years in the sample for which the Division operated (1988-1999). This estimate adds an additional $6.2 million to cases in our sample occurring 1988-1999. However, due to the protracted nature of capital litigation, we must also account for the cost of cases originating within our sample timeframe but with activity beyond 1999. The combined 2000-2001 percentage of transferred (old) cases is 41%. Discounting by .41 for each subsequent year beyond 1999, we estimate another $.95 million in Capital Defense Division costs accruing to the cases in our sample beyond 1999. The total estimated cost of the Capital Defense Division accrued to cases in our sample is $7.15 million.

We are confident the cost model does not account for this additional figure of nearly $7.15 million in costs because the Division "is generally administrative in nature and rarely litigates death penalty cases" (Department of Legislative Services 2004, 4). Moreover, the estimate is likely a conservative one given that some technical and special fees are inevitably unaccounted for.

APPENDIX C – ECONOMETRIC MODELS

Stage 1 – Accounting for Missing Cases

Our population of interest includes all 1,136 capital eligible cases in Maryland prosecuted between 1978 and 1999 that resulted in a guilty verdict. Case records were either missing or incomplete for 627 of these cases, yielding a final analytical sample of n = 509. An analysis of the missing cases revealed that cases are not missing at random, and, as such, failure to account for the influence of missing cases may bias estimates of the cost of the death penalty.[24] We followed the literature on non-responses in surveys and use sampling weights to adjust for potential bias due to missing data. Weights were generated using the following logistic regression model which regresses whether or not a case had complete data on attributes of the case that may be related to why the case was missing.

$$p_i = \exp(X\lambda) / (1 + \exp(X\lambda)) \qquad \text{(A3.1)}$$

In (A3.1), p_i is an indicator variable for whether or not case *i* had complete case data and X is a vector of covariates theoretically linked to the probability the data are missing. In order to generate sampling weights for each case, model (A3.1) was run separately for treatment cases and comparison cases generating a predicted p_i-hat value, the probability that the case contained complete records. For each of the 509 complete cases, we generated a base weight, w_i which is given by:

$$w_i = 1/p_i \qquad \text{(A3.2)}$$

In (A3.2), p_i is the probability that case *i* is complete (non-missing) in the dataset. Thus, cases that have a high probability of having missing data – and are therefore the cases that most closely resemble the cases where data were missing -- but are not missing data receive a higher weight in the analysis. In order to ensure that no single case contributed undue influence to subsequent models weights are winsorized at a value of four. The weights were then normalized so the sum of the weights were equal to the sample size of the complete cases (n = 509). The normalized weights did not differ significantly by treatment condition, indicating no bias in case missingness along treatment status. **Table A3.1** contains a list of predictor variables used to generate sampling weights.

---

[24] In order to investigate whether missingness was related to observable covariates, a logistic regression analysis was run on a binary measure of missingness.

Table A3.1.

Independent variables used in the regression models to generate weights to account for missing values.

Defendant Characteristics:

Age of defendant, defendant race is white, defendant has a prior felony charge, defendant has a history of alcohol abuse, defendant has a troubled job history

Victim characteristics:

Victim race is white, victim is unable to defend oneself, victim is elderly or frail

Offense characteristics:

Multiple victims, defendant was a stranger to any victim, victim was executed, victim made to beg for life, victim took a long time to die, victim was killed in own home, defendant persisted even when victim 's death was certain, defendant attempted to evade capture, defendant confessed to the crime, evidence against Defendant was circumstantial

Statutory Aggravators

A1 - Victim was a law enforcement officer

A2 - Defendant committed murder while in a correctional institution

A3 - Defendant committed murder while trying to escape custody

A4 - V Victim was murdered in the course of an abduction

A5 - Victim was a child abductee

A6 - Defendant murdered pursuant to agreement for remuneration

A7 - Defendant employed another who killed for remuneration

A8 - Defendant committed murder while under life sentence

A9 - Same incident produced multiple murder victims

A10 - Defendant committed murder in the commission of another offense

County Dummies (reference category = all other counties)

Anne Arundel, Baltimore City, Baltimore County, Harford, Montgomery, Prince Georges, Other

Year of Case

Source: Urban Institute analysis.

As the generation of sampling weights is largely atheoretic, all variables that were either empirically or theoretically related to case missingness were included in the model. The explanatory power of the model ($R^2 = 0.44$) was high, indicating that the model is able to accurately predict whether or not cases were complete. In order to verify that the selection weights successfully re-weighted the sample, independent samples t-tests were run to compare the unweighted and weighted means for each predictor in the model. This analysis returned no significant differences across all

twenty-four variables, indicating that bias caused by incomplete case records is successfully removed by model (1), conditional upon no omitted variable bias.

Stage 2 – The Decision to Seek a Death Notice

In quasi-experimental designs, factors not included in models that are related to both selection into treatment (the filing of a death notice) and outcomes (cost) have the potential to bias resulting point estimates on the treatment parameter in final outcome models (Heckman 1977; Greene 1981; Berk 1983; Heckman 1990). Propensity score models have been proposed as a viable solution to modeling selection bias arising under this scenario (Rosenbaum and Rubin 1983; Heckman Ichimura and Todd 1997; Dehejia and Wahba 1999; Caliendo and Kopeinig 2006). Using fitted values generated from multivariate model on a binary measure of selection, researchers can control for the impact of observables on the selection process.[25]

We use propensity scores to address the possibility that there are cases that would have been processed more intensively (at higher cost) even in the absence of the death penalty. Such a scenario might occur, for example, in cases where the victim is elderly or was unable to defend himself or if the certain counties that are more likely to file a death notice also tend to adjudicate cases more intensively than other counties. If this is the case, explicitly modeling the process by which selection occurs reduces threats to internal validity in the outcome model and, under certain conditions, propensity score analysis has the potential to mimic a randomized controlled trial and generate unbiased estimates of the treatment effect (Caliendo and Kopeinig 2006).

Little advice is available on the ideal functional form that a propensity score model should take (Smith 1997). As logit and probit models yield similar results for binary measures of treatment, we follow Caliendo and Kopeinig (2006) and use a logit specification as the logistic distribution has more density mass in the bounds. Predicted propensity scores can be sensitive to variable selection criteria utilized by researchers. Omission of important variables in propensity score models can seriously bias resulting estimates (Heckman Ichimura and Todd 1997; Dehejia and Wahba 1999). However, overparameterization of propensity score models can decrease the sample space on the propensity scores across treatment and comparison conditions and can increase the variance of the propensity scores and the standard errors around the resulting treatment effect (Augurky and Schmidt 2001; Bryson Dorsett and Purdon 2002). Rubin and Thomas (1996) recommend against trimming models in the name of parsimony arguing that variables should be excluded from the model only if it is unrelated to outcomes or if it violates the assumption that predictors are exogenous with the selection variable.

In selecting variables for inclusion of our propensity score model, we follow Rubin and Thomas (1996) and exclude all variable that are unrelated to outcomes but retain all other available predictors, so as to minimize the probability of omitted variable bias. We follow Heckman,

---

[25] The use of selection models is not without statistical cost. Propensity scores - whether used in matching, stratification or weighting - result in increased standard errors and, as such, are relatively inefficient estimators.

Ichimura, Smith and Todd (1997) and began with a parsimonious model containing several theoretically important predictors of selection (the filing of a death notice) and add predictors one by one, retaining all predictors that are significant at $p < 0.5$. This process yields a propensity score model with fifteen predictors, and a Pseudo R^2 of 0.25.

Table 2 lists the predictors that were retained in the analysis. In order to assess the quality of our propensity score model, we compare follow Sianesi (2004) and compare the Pseudo R^2 of the propensity score prior to and after using inverse probability of treatment weights. After weighting, the Pseudo R^2 of the propensity score model is just 0.04 and a likelihood ratio test fails to reject that coefficients in the propensity score model are jointly equal to zero. In addition, independent samples t-tests confirm that no differences remain among variables in the weighted versus unweighted sample, indicating that our model is sound.

Table 2 – List of Predictors in Propensity Score Analysis (Stage 2)

Age of defendant
Race of victim (1 if white, 0 if not)
Victim was executed
Victim was killed in own home
Victim was elderly or frail
Victim was unable to defend himself
Evidence against the defendant was circumstantial
A9 – The same incident produced multiple murder victims

County dummy variables (reference category = all other counties)

- Anne Arundel
- Baltimore City
- Baltimore County
- Harford
- Montgomery
- Prince Georges

Year of Case

Stage 3 – Outcome Models

In the third stage of the analysis, outcome models are specified using the sampling weights generated in (A3.2). Next, outcome models are of the form specified in (A3.3):

$$COST_i = \beta 0 + \beta 1 * DN_i + \beta 2 * DS_i + \pi PS_i + Z\varphi + \varepsilon_i \qquad \text{(A3.3)}$$

In (A3.3), $COST_i$ is the total cost of processing case *i* to all stakeholders, DN_i is an indicator variable equal to 1 if the case had a death notice filed and 0 if not and DS_i is an indicator variable equal to 1 if a death sentence was handed down and 0 if not. PS_i is the propensity score estimated

in Stage 2 and represents the probability that case *i* receives a death notice. Z is a vector of covariates theoretically related to the cost of processing a case. In models without any additional covariates, the intercept parameter, $\beta 0$, is the average cost of a capital-eligible case in which the death penalty was not sought. It is possible to obtain estimates of the total cost of each category of capital-eligible case by adding each successive coefficient. For example, $\beta 0 + \beta 1$ yields the average total cost of a case in which a death notice was filed and $\beta 0 + \beta 1 + \beta 2$ yields the average total cost of a case in which a death sentence is handed down. All outcome models are run using the sampling weights estimated in Stage 1 of the analysis.

EXHIBIT 22

RJ reviewjournal.com
http://www.reviewjournal.com/news/nevada-legislature/panel-rejects-construction-new-nevada-execution-chamber

Panel rejects construction of a new Nevada execution chamber

By SEAN WHALEY LAS VEGAS REVIEW-JOURNAL CAPITAL BUREAU

May 22, 2013 - 10:07am

CARSON CITY — A panel of lawmakers decided Wednesday not to fund construction of a new $700,000 execution chamber at Ely State Prison.

The decision was made by a joint Assembly Ways and Means and Senate Finance subcommittee when it voted to approve a $104 million capital improvement program for the upcoming two-year budget that begins July 1.

The vote was unanimous, and lawmakers did not comment.

In reviewing the project in past meetings, several lawmakers questioned the need for the new execution chamber. They asked why the current facility at the now shuttered Nevada State Prison in the capital could not be used instead if an execution is scheduled in the next two years.

Corrections Department Director Greg Cox said the current chamber, an old gas chamber that has been used for lethal injections, is not compliant with the Americans With Disabilities Act.

Cox said in previous testimony that he would expect litigation to be filed challenging the use of the chamber if an execution was to go forward.

There is no elevator access, so a disabled inmate facing execution would have to be carried to the "last night" cell across from the chamber.

The viewing area is cramped and provides little room for official witnesses, media representatives, a religious leader, the victims' family members, attorneys and others who choose to or are required to attend executions.

Cox said any new execution chamber probably would face litigation too but not to the degree the existing facility would see from the federal public defender's office.

But he acknowledged the old chamber could be used if necessary.

Nevada's 83-inmate death-row population is housed at Ely, 302 miles east of the capital.

Cox said the project is needed to follow state law.

Ely is an appropriate location because that is where the death row population is housed.

The last execution, by lethal injection, occurred at the Nevada State Prison on April 26, 2006, when Daryl Mack was put to death.

Mack was executed for the rape and murder of a Reno woman, Betty Jane May, in 1988.

Contact Capital Bureau reporter Sean Whaley at swhaley@reviewjournal.com or 775-687-3900.

EXHIBIT 23

Decreasing values (%)

Sold in past year (%)

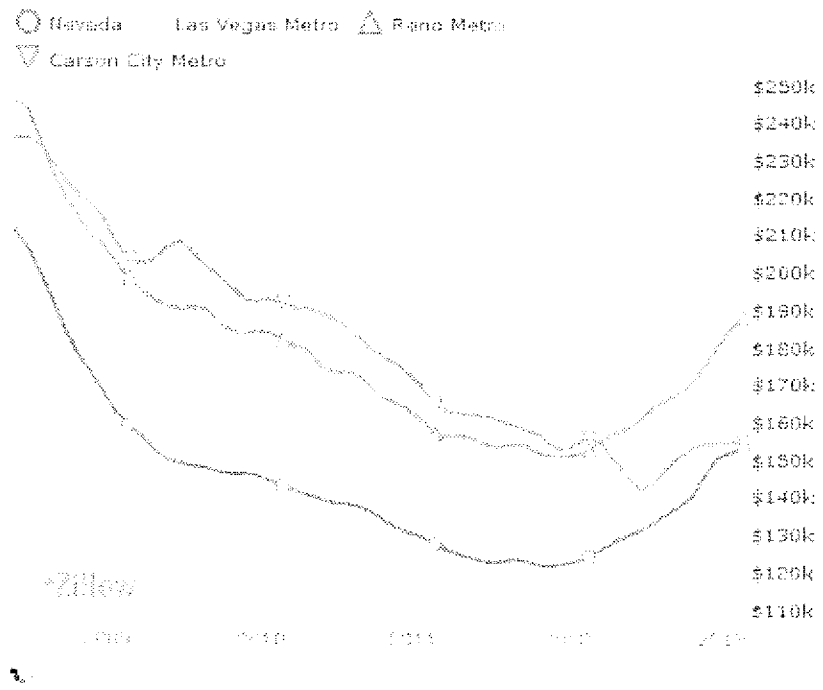
$152,900
23.2%Y-o-Y (Year over Year)

Calculated 06/15/2013 (2013-06-15)*

Share
Email to a friend
Share on Facebook
Tweet this
Tweet this
Tweet this
Tweet this
Tweet this
Tweet this
Tweet this
Tweet this
Tweet this
Tweet this
Tweet this
Tweet this
Tweet this
Tweet this

Download
Full report data (/market-report/06-13/42/NV.xls)
Chart data (/market-report/time-series/42/NV.xls)

Embed
FAQs (http://www.zillow.com/wikipages/Real-Estate-Market-Reports-FAQ/)



(yui-dt1000000-href-id)	Region (yui-dt1000000-href-link)	M-o-M (yui-dt1000000-href-mom)	Q-o-Q (yui-dt1000000-href-qoq)	Y-o-
☑	Nevada (http://www.zillow.com/local-info/NV-home-value/r_42/)	0.7%	4.8%	23.2
☑	Carson City Metro (http://www.zillow.com/local-info/NV-Carson-City-Metro-home-value/r_394444/)	0.1%	0.5%	-0.8
☐	Elko Metro (http://www.zillow.com/local-info/NV-Elko-Metro-home-value/r_394566/)	—	—	—
☐	Fallon Metro (http://www.zillow.com/local-info/NV-Fallon-Metro-home-value/r_394584/)	—	—	—
☐	Fernley Metro (http://www.zillow.com/local-info/NV-Fernley-Metro-home-value/r_394592/)	-0.3%	3.3%	6.5%

*Includes data and transactions through 05/31/2013 (2013-05-31)

National Avg Rate	Current	Last Week
30yr fixed	4.20%	4.41%
15yr fixed	3.29%	3.41%
5/1 ARM	3.21%	3.36%

Live Rates

Mortgage Shopper Location	Lowest Rate	Lender Rating
• Juneau, AK	4.00%	4.5/5.0
• Tulsa, OK	4.00%	4.5/5.0
• West Fargo, ND	4.00%	4.6/5.0
• Johns Creek, GA	4.12%	4.6/5.0
• South Kingstown, RI	4.00%	4.6/5.0
• Parma Heights, OH	4.00%	4.6/5.0
• Phoenix, AZ	3.95%	4.8/5.0
• Kenosha, WI	4.00%	4.6/5.0

Homes for Sale

(/homedetails/6604-Lavender-Lion-St-Las-Vegas-NV-89086/2111785877_zpid/)
6604 Lavender Lion St, Las Vegas, NV 89086 (/homedetails/6604-Lavender-Lion-St-Las-Vegas-NV-89086/2111785877_zpid/)
For Sale: $179,990

Beds: 4
Sqft: 2442
Baths: 3.0
Lot: 5227

(/homedetails/3789-Lily-Haven-Ave-Las-Vegas-NV-89120/66857536_zpid/)
3789 Lily Haven Ave, Las Vegas, NV 89120 (/homedetails/3789-Lily-Haven-Ave-Las-Vegas-NV-89120/66857536_zpid/)
For Sale: $258,000

Beds: 4
Sqft: 2561
Baths: 3.0
Lot: 5227

(/homedetails/10841-Pearl-River-Ave-Las-Vegas-NV-89166/94714353_zpid/)
10841 Pearl River Ave, Las Vegas, NV 89166 (/homedetails/10841-Pearl-River-Ave-Las-Vegas-NV-89166/94714353_zpid/)
For Sale: $182,000

Beds: 4
Sqft: 2139
Baths: 3.0
Lot: 6969

See listings near NV (/nv/)

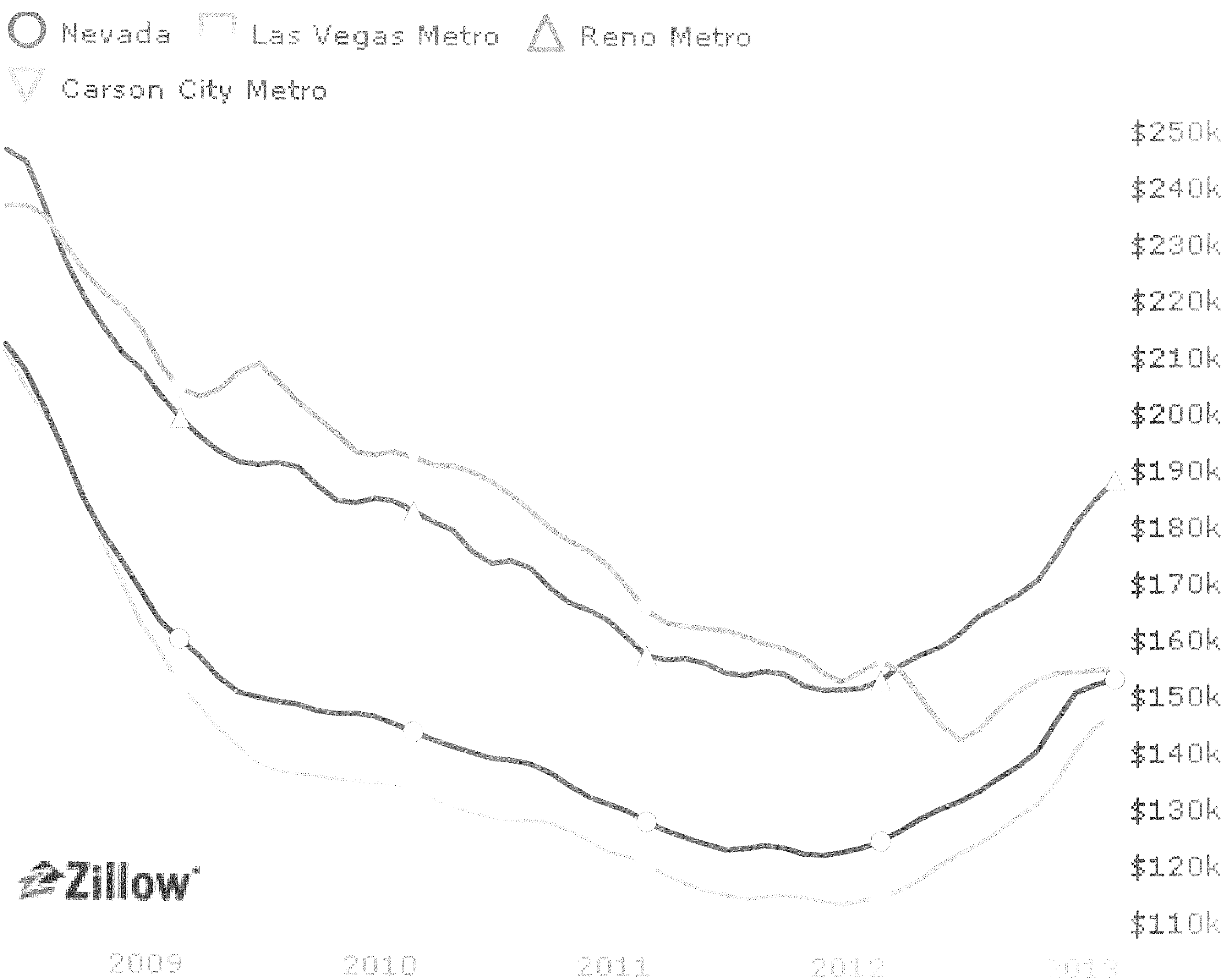

Nevada
Las Vegas Metro
Reno Metro
Carson City Metro
$250k
$240k
$230k
$220k
$210k
$200k
$190k
$180k
$170k
$160k
$150k
$140k
$130k
$120k
$110k
2009
2010
2011
2012
2013
Zillow

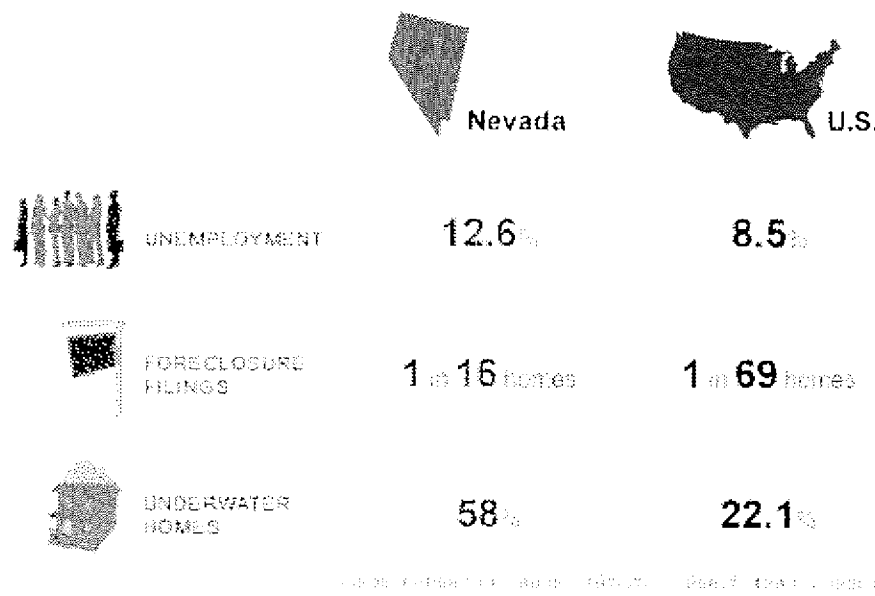
EXHIBIT 24

AMERICA'S CHOICE 2012

Nevada's triple economic whammy

By Tami Luhby @CNNMoney February 4, 2012 12:36 PM ET

NEVADA VS. THE NATION



Nevada has the dubious distinction of leading the nation in unemployment, foreclosure filings and number of underwater homes. That's not good for the state's economy.

NEW YORK (CNNMoney) -- The Great Recession has dealt Nevada a losing hand.

The Silver State, which will hold the Republican caucus on Saturday, has the dubious distinction of leading the nation in unemployment, foreclosure filings and share of homes worth less than the mortgages on them.

The collapse of the housing market wreaked havoc on homeowners, but also caused the once-prospering construction industry to fold, sending the unemployment rate skyrocketing.

Adding to the state's woes, the national economic downturn hurt Nevada's lifeblood of tourism and gambling, costing even more jobs.

Nevada's unemployment rate soared to an all-time high of 14.9% in December 2010. While it's since fallen to 12.6%, that's still more than four percentage points higher than the national rate. And more than half of those out of work have been jobless for at least six months.

A staggering 1 in 16 homes have been hit with a foreclosure filing, versus the national rate of 1 in 69 homes. And more than half of borrowers owe more on their mortgages than their homes are worth, compared to just over a fifth nationwide.

Meanwhile, home prices continue to plummet. S&P/Case Shiller recently reported that Las Vegas **home prices** fell by 9.1% over the 12 months ending in November, the second-worst performance among the 20 cities surveyed. The reason: a high number of foreclosure sales.

The myriad **foreclosure prevention programs** rolled out by the Obama administration have done little to stabilize housing and the economy in this hard-hit state, housing counselors say.

"While they've been helpful, they haven't addressed the heart of the problem," said Gail Burks, chief executive of the Nevada Fair Housing Center, noting the unending drop in home values. "Nothing in Nevada has stemmed the tide and gotten the market back on track."

Top 10 turnaround towns

Maria Plumeri is one of those delinquent homeowners fighting to get a loan modification. She and her husband, Paul, stopped paying their mortgage in September after the $1,200 monthly tab became too much for them on his Social Security and pension and her disability checks.

Plumeri, who owes $189,000 on a home worth $32,000, is hardly alone in her Sandy Valley community. Neighbors on either side of her are also delinquent.

"If you drove around Sandy Valley, you'd see a lot of stickers from the bank. There has to be 20 houses with no one living in the them," said Plumeri, 64. "The government hasn't helped anyone here in Sandy Valley."

Experts cite several stumbling blocks, including an unwillingness of the banks to participate and the need to reduce the mortgage principal for so-called underwater borrowers.

Even if home prices rise 2% to 3% a year, it will take an average of 10 years for homeowners' debts to come in line with property values, said Nasser Daneshvary, director of Lied Institute for Real Estate Studies at the University of Nevada, Las Vegas. Many people aren't willing to wait that long, instead choosing to simply walk away.

Others say increasing employment is the key to saving the state's housing market. Not only is joblessness prompting people to default on their mortgages, but it's preventing them from buying properties.

"No matter what we do for them, no matter how much principal reduction we give them, if they don't have a job, they will default," said Leonard Chide, executive director of Neighborhood Housing Services of Southern Nevada. "If people had jobs, they'd pay their bills."

The good news is that a sliver of silver lining has appeared. The state's economy has begun to recover, though improvement is slow, said Stephen Brown, director of the Center for Business and Economic Research at the University of Nevada, Las Vegas. Tourism is picking up, as is gambling. But the housing and construction industries are expected to remain in the doldrums for the time being.

"Nevada cannot look to real estate for its economic growth right now," Brown wrote recently in his 2012 outlook for the state. "Diversification will pay dividends in the future." ■

First Published: February 3, 2012: 5:31 AM ET

EXHIBIT 25

Nevada leads in underwater homes as market improves

CREATED MAR. 20, 2013

LAS VEGAS (AP) -- Analysts say Nevada still leads the nation in underwater mortgages, although rising home prices have improved the overall equity situation in the U.S.

A report released Tuesday by analytic firm Corelogic reports 52.4 percent of mortgaged properties in Nevada have negative equity. That's more than Florida, which ranks second with 40.2 percent of properties underwater, and third-place Arizona, with nearly 35 percent of properties underwater.

Underwater is also called negative equity and means a borrower owes more on their mortgage than their home is worth.

Negative equity in the U.S. totaled $628 billion at the end of the fourth quarter of 2012, down by $42 billion from the previous quarter.

Find this article at:
http://www.ktnv.com/news/local/199195901.html

☐ Check the box to include the list of links referenced in the article.

EXHIBIT 26

'Underwater' homes decline nationwide, report says

March 19, 2013 | By Andrew Khouri

Fewer borrowers nationwide owe more on their mortgages than their homes are worth, providing a boost to the housing recovery, according to a new report.

Roughly 200,000 borrowers escaped their "negative equity" positions during the final three months of last year, said real estate data provider CoreLogic. During all of last year, 1.7 million residential properties moved from negative to positive equity.

Overall, the nation's negative equity fell from $670 billion in the third quarter to $628 billion at the end of last year, CoreLogic of Irvine said Tuesday.

Southern California's housing recovery: An interactive map

A shortage of houses on the market has pushed up home prices in many markets, including California. But the supply could increase, cooling price increases, if more homeowners escape negative equity positions and regain the option of selling.

"The scourge of negative equity continues to recede across the country," CoreLogic Chief Executive Anand Nallathambi said in a statement. "With fewer borrowers underwater, the fundamentals underpinning the housing market will continue to strengthen."

The inability of homeowners to sell and move -- say, for a better job -- also places a drag on the overall economy.

FROM THE ARCHIVES

More homeowners rise above water as prices gain

In California, an estimated 1.7 million homes were underwater at year's end, or about a quarter of all homes with a mortgage. The Riverside-San Bernardino-Ontario metropolitan area had 35.7% of its

January 17, 2013

Home price gains drive drop in underwater mortgages

September 12, 2012

Shortage of homes for sale creates fierce competition

June 10, 2012

Negative equity remains a drag on housing market

May 24, 2012

MORE STORIES ABOUT

Equity

Home Prices

Home_prices

Mortgage

homes with a mortgage in negative equity — the fifth-highest percentage among the country's largest metropolitan areas.

Nationwide, 10.4 million homes, or 21.5% of all homes with a mortgage, remain in negative equity, a decline from 10.6 million homes in the third quarter.

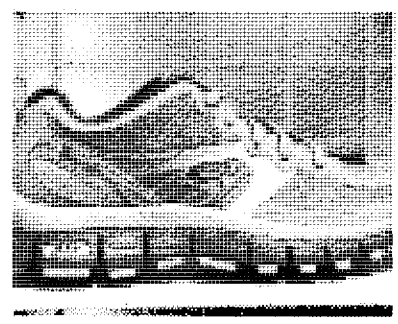
ALSO:

Bay Area home prices up in February, sales down

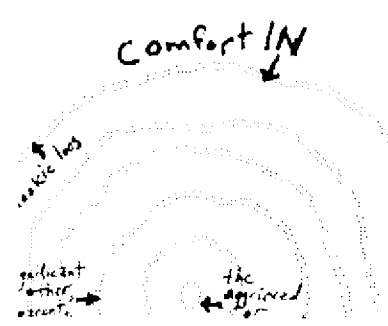
Job growth accelerates as housing market strengthens

Rising housing prices are driving down affordability in California

FEATURED



Skechers lawsuit: How to get your piece of the $40-million payout



How not to say the wrong thing

Los Angeles Times

How to find your lost or stolen iPhone 5

MORE:

Ellen DeGeneres and Portia de Rossi buy Montecito mansion

Top 10 cars: best gas mileage, lowest sticker price

The FDA warns against using quinine for leg cramps

EXHIBIT 27

Local Area Unemployment Statistics

BROWSE LAU

LAU HOME

LAU OVERVIEW

LAU NEWS RELEASES

LAU DATABASES

LAU TABLES & MAPS

LAU DOCUMENTATION

LAU FAQS

CONTACT LAU

SEARCH LAU

Go

LAU TOPICS

JOBSEEKERS

PUBLIC POLICYMAKERS

RESEARCHERS

LABOR FORCE DATA

GEOGRAPHY

METHODOLOGY

Unemployment Rates for States

Unemployment Rates for States
Monthly Rankings
Seasonally Adjusted
June 2013[p]

Rank	State	Rate
1	NORTH DAKOTA	3.1
2	SOUTH DAKOTA	3.9
3	NEBRASKA	4.0
4	VERMONT	4.4
5	HAWAII	4.6
5	IOWA	4.6
5	WYOMING	4.6
8	UTAH	4.7
9	MINNESOTA	5.2
9	NEW HAMPSHIRE	5.2
9	OKLAHOMA	5.2
12	MONTANA	5.4
13	VIRGINIA	5.5
14	KANSAS	5.8
15	ALASKA	6.1
15	WEST VIRGINIA	6.1
17	IDAHO	6.4
18	ALABAMA	6.5
18	TEXAS	6.5
20	MAINE	6.8
20	NEW MEXICO	6.8
20	WASHINGTON	6.8
20	WISCONSIN	6.8
24	MISSOURI	6.9
25	COLORADO	7.0
25	LOUISIANA	7.0
25	MARYLAND	7.0
25	MASSACHUSETTS	7.0
29	FLORIDA	7.1
30	OHIO	7.2
31	ARKANSAS	7.3
31	DELAWARE	7.3
33	NEW YORK	7.5

33	PENNSYLVANIA	7.5
35	OREGON	7.9
36	ARIZONA	8.0
37	CONNECTICUT	8.1
37	SOUTH CAROLINA	8.1
39	INDIANA	8.4
39	KENTUCKY	8.4
41	CALIFORNIA	8.5
41	DISTRICT OF COLUMBIA	8.5
41	TENNESSEE	8.5
44	GEORGIA	8.6
45	MICHIGAN	8.7
45	NEW JERSEY	8.7
47	NORTH CAROLINA	8.8
48	RHODE ISLAND	8.9
49	MISSISSIPPI	9.0
50	ILLINOIS	9.2
51	NEVADA	9.6

[p] = preliminary.
NOTE: Rates shown are a percentage of the labor force. Data refer to place of residence. Estimates for the current month are subject to revision the following month.

Last Modified Date: July 18, 2013

U.S. Bureau of Labor Statistics | Local Area Unemployment Statistics Information and Analysis, PSB Suite 4675, 2 Massachusetts Avenue, NE
Washington, DC 20212-0001
www.bls.gov/LAU | Telephone: 1-202-691-6392 | Contact LAUS

Databases, Tables & Calculators by Subject

Change Output Options: From: 2003 To: 2013 GO

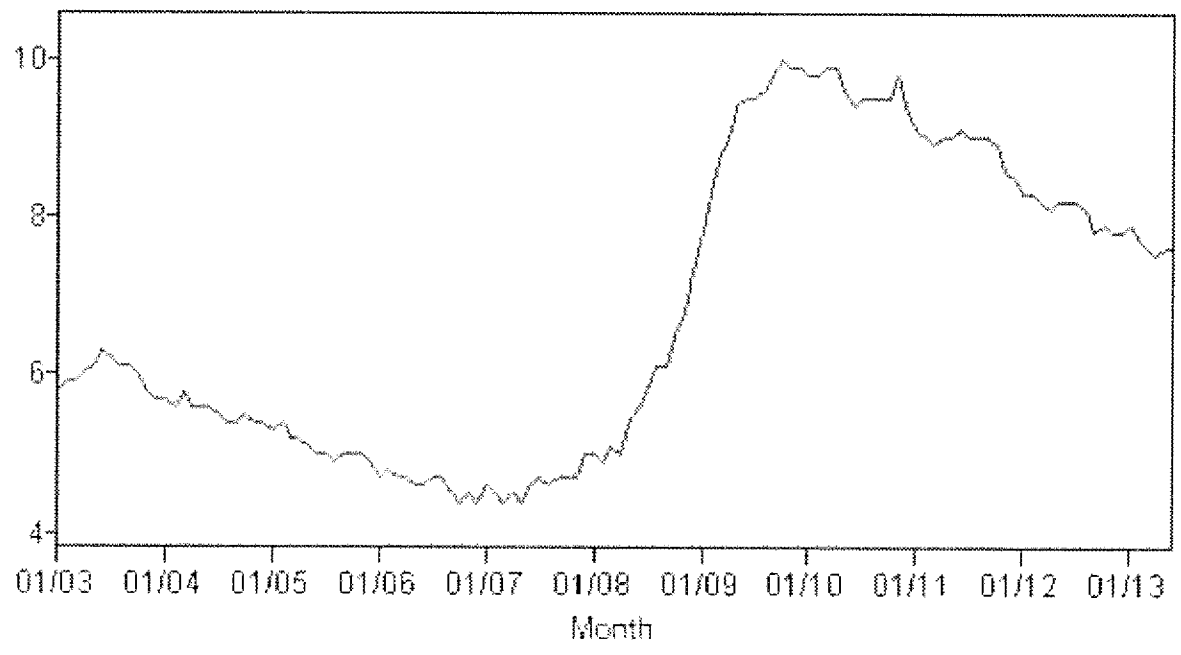
include graphs

More Formatting Options

Data extracted on: July 19, 2013 (5:25:13 PM)

Labor Force Statistics from the Current Population Survey

Series Id: LNS14000000
Seasonally Adjusted
Series title: (Seas) Unemployment Rate
Labor force status: Unemployment rate
Type of data: Percent or rate
Age: 16 years and over



Download: .xls

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2003	5.8	5.9	5.9	6.0	6.1	6.3	6.2	6.1	6.1	6.0	5.8	5.7	
2004	5.7	5.6	5.8	5.6	5.6	5.6	5.5	5.4	5.4	5.5	5.4	5.4	
2005	5.3	5.4	5.2	5.2	5.1	5.0	5.0	4.9	5.0	5.0	5.0	4.9	
2006	4.7	4.8	4.7	4.7	4.6	4.6	4.7	4.7	4.5	4.4	4.5	4.4	
2007	4.6	4.5	4.4	4.5	4.4	4.6	4.7	4.6	4.7	4.7	4.7	5.0	
2008	5.0	4.9	5.1	5.0	5.4	5.6	5.8	6.1	6.1	6.5	6.8	7.3	
2009	7.8	8.3	8.7	9.0	9.4	9.5	9.5	9.6	9.8	10.0	9.9	9.9	
2010	9.8	9.8	9.9	9.9	9.6	9.4	9.5	9.5	9.5	9.5	9.8	9.3	
2011	9.1	9.0	8.9	9.0	9.0	9.1	9.0	9.0	9.0	8.9	8.6	8.5	
2012	8.3	8.3	8.2	8.1	8.2	8.2	8.2	8.1	7.8	7.9	7.8	7.8	
2013	7.9	7.7	7.6	7.5	7.6	7.6							

EXHIBIT 28

Amendment No. 604

Assembly Amendment to Assembly Bill No. 444 (BDR S-817)

Proposed by: Assembly Committee on Legislative Operations and Elections

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted ☐	Lost ☐			Adopted ☐	Lost ☐		
Concurred In ☐	Not ☐			Concurred In ☐	Not ☐		
Receded ☐	Not ☐			Receded ☐	Not ☐		

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold underlining** is newly added transitory language.

NCA/BAW Date: 5/14/2013

A.B. No. 444—Provides for an audit of the fiscal costs of the death penalty.
(BDR S-817)

ASSEMBLY BILL NO. 444–COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

MARCH 25, 2013

Referred to Committee on Legislative Operations and Elections

SUMMARY—Provides for an audit of the fiscal costs of the death penalty. (BDR S-817)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to the death penalty; providing for an audit of the fiscal costs of the death penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill requires the Legislative Auditor to conduct an audit of the fiscal costs of the death penalty in Nevada. The audit must include, without limitation, an examination and analysis of the costs of prosecuting and adjudicating capital cases compared to noncapital cases. The Legislative Auditor is required to present a final written report of the audit to the Audit Subcommittee of the Legislative Commission on or before January 31, 2015.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 1. The Legislative Auditor shall conduct an audit of the fiscal costs associated with the death penalty in this State.

2. The audit conducted pursuant to this section must include an examination and analysis concerning the costs of prosecuting and adjudicating capital murder cases as compared to noncapital murder cases, including, without limitation, the costs relating to the death penalty borne by the State of Nevada and by the local governments in this State at each stage of the proceedings in capital murder cases, including, without limitation, pretrial costs, trial costs, appellate and postconviction costs and costs of incarceration such as:

(a) The costs of legal counsel involved in the prosecution and defense of a capital murder case for all pretrial, trial and postconviction proceedings; and

(b) Additional procedural costs involved in capital murder cases as compared to noncapital murder cases, including, without limitation, costs relating to:

(1) The processing of bonds, including costs for investigation by prosecutors, police and other staff;

(2) The investigation of a case before a person is charged with a crime, including costs for investigation by the prosecution and the defense;

(3) Pretrial motions;

(4) Extradition;

(5) Psychiatric and medical evaluations;

(6) Expert witnesses;

(7) Juries;

(8) Sentencing proceedings;

(9) Appellate and postconviction proceedings, including motions, writs of certiorari and state and federal petitions for postconviction relief;

(10) Requests for clemency;

(11) The incarceration of persons awaiting trial in capital murder cases and persons sentenced to death; and

(12) The execution of a sentence of death, including costs of facilities and staff.

3. The audit must also examine the fiscal costs, including any potential cost savings, of the death penalty on:

(a) The use of plea bargaining in death eligible cases;

(b) Strategic litigation choices by the prosecution and the defense; and

(c) Sentencing.

4. The audit must be conducted:

(a) In the manner set forth in NRS 218G.010 to 218G.450, inclusive, and for the purposes of the audit conducted pursuant to this section, the provisions of those sections are applicable to a local government in the same manner as to an agency of the State.

(b) In accordance with applicable ~~[accounting]~~ **auditing** standards set forth by the United States Government Accountability Office, including standards relating to the professional qualifications of the auditors, the quality of the audit work and the characteristics of professional and meaningful reports.

5. In determining the methodologies to be used, the Legislative Auditor shall review and consider audits, reports and data relating to the costs of the death penalty conducted or published by other states and the United States Department of Justice and the Administrative Office of the United States Courts. Methodologies and data to be considered must include, at a minimum, the cost estimation approach, top-down accounting method, retrospective observational design, independent statistical analyses, administrative databases and self-reported data.

6. On or before January 31, 2015, the Legislative Auditor shall present a final written report of the audit to the Audit Subcommittee of the Legislative Commission created by NRS 218E.240.

Sec. 2. This act becomes effective upon passage and approval.

77th (2013) Session
Vote on AB444 (1st Reprint) on Assembly Final Passage
May 17, 2013 at 8:04 PM

| 38 Yea | 1 Nay | 3 Excused | 0 Not Voting | 0 Absent |

Paul Aizley	Yea
Paul Anderson	Yea
Elliot Anderson	Yea
Teresa Benitez-Thompson	Yea
David Bobzien	Yea
Irene Bustamante Adams	Yea
Maggie Carlton	Yea
Richard Carrillo	Yea
Lesley Cohen	Yea
Skip Daly	Yea
Olivia Diaz	Excused
Marilyn Dondero Loop	Yea
Wesley Duncan	Yea
Andy Eisen	Yea
John Ellison	Yea
Michele Fiore	Yea
Lucy Flores	Yea
Jason Frierson	Yea
Tom Grady	Yea
John Hambrick	Nay
Ira Hansen	Yea
Cresent Hardy	Yea
James Healey	Yea
Pat Hickey	Yea
Joseph Hogan	Excused
William Horne	Yea
Marilyn Kirkpatrick	Yea
Randy Kirner	Yea

Peter Livermore	Yea
Andrew Martin	Yea
Harvey Munford	Yea
Dina Neal	Yea
James Ohrenschall	Yea
James Oscarson	Yea
Peggy Pierce	Excused
Ellen Spiegel	Yea
Michael Sprinkle	Yea
Lynn Stewart	Yea
Heidi Swank	Yea
Tyrone Thompson	Yea
Jim Wheeler	Yea
Melissa Woodbury	Yea

MINUTES OF THE FLOOR MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-Seventh Session
March 25, 2013

The Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 11:47 a.m. on Monday, March 25, 2013, behind the bar of the Assembly.

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chair
Assemblywoman Lucy Flores, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman Wesley Duncan
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Andrew Martin
Assemblyman Harvey J. Munford
Assemblyman James Oscarson

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Pat Hutson, Committee Manager
Karen Pugh, Committee Secretary

Chair Ohrenschall:
We have before us seven bill draft requests (BDRs) for introduction. They are as follows:

BDR 23-815—Requires a cooling off period before former public officers who served on certain public bodies may serve as paid lobbyists on matters under consideration by those public bodies. (Later introduced as Assembly Bill 438.)

BDR 24-985—Revises provisions governing the dates for certain elections. (Later introduced as Assembly Bill 439.)

Minutes ID: 663

BDR 24-814—Makes various changes related to elections. (Later introduced as Assembly Bill 441.)

BDR 24-816—Revises provisions relating to campaign practices. (Later introduced as Assembly Bill 442.)

BDR 23-988—Revises provisions governing ethics in government. (Later introduced as Assembly Bill 443.)

BDR S-817—Provides or an audit of the fiscal costs of the death penalty. (Later introduced as Assembly Bill 444.)

BDR 17-984—Revises provisions governing requests for the drafting of legislative measures. (Later introduced as Assembly Bill 446.)

I will take a motion from the Committee to introduce these BDRs.

ASSEMBLYMAN HICKEY MOVED TO INTRODUCE BDR 23-815, BDR 24-985, BDR 24-814, BDR 24-816, BDR 23-988, BDR S-817, BDR 17-984.

ASSEMBLYWOMAN FLORES SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We also have a work session document (Exhibit C) for Assembly Joint Resolution 6, which was presented before this Committee on March 21, 2013.

Assembly Joint Resolution 6: Recognizes Nevada's partnership and friendship with, and expresses support for, the State of Israel. (BDR R-458)

There are no amendments proposed for this resolution. April 4, 2013, is Jewish Federation of Las Vegas Day at the Legislature, and there will be a Holocaust remembrance event at the Governor's Mansion that evening.

I will accept a motion from the Committee to do pass this resolution as originally drafted.

ASSEMBLYWOMAN FLORES MOTIONED TO DO PASS ASSEMBLY JOINT RESOLUTION 6.

ASSEMBLYMAN MARTIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Having no further business, I will close this meeting of the Assembly Committee on Legislative Operations and Elections. The meeting is adjourned [at 11:50 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karen Pugh
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: March 25, 2013 **Time of Meeting: 11:47 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda (none)
	B		Attendance Roster (none)
A.J.R. 6	C	Susan Scholley	Work session document

Electronically Filed
07/25/2013 02:03:29 PM

CLERK OF THE COURT

OPPM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

MAURICE MANUEL SIMS,
#2684920

Defendant.

CASE NO: C-13-287414-1

DEPT NO: III

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE THE STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY BASED ON THE COST OF CAPITAL PUNISHMENT AND ATTENDANT POLICY CONSIDERATIONS, OR IN THE ALTERNATIVE, MOTION TO STAY CAPITAL PROCEEDINGS PENDING THE OUTCOME OF THE AUDIT RELATED TO ASSEMBLY BILL 444

DATE OF HEARING: 8/1/13
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Strike The State's Notice Of Intent To Seek The Death Penalty Based On The Cost Of Capital Punishment And Attendant Policy Considerations, Or, In The Alternative, Motion To Stay Capital Proceedings Pending The Outcome Of The Audit Related To Assembly Bill 444.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

POINTS AND AUTHORITIES

ARGUMENT

I. THE STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY IS VALID AND SHOULD NOT BE STRICKEN

Defendant moves to strike the State's Notice of Intent to Seek the Death Penalty ("Notice"). Defendant argues that the Notice should be stricken because the procedural safeguards mandated by Nevada's death penalty scheme are not viable in the modern economic climate. Defendant's Motion ("DM") 17. Defendant's Motion is without merit as he fails to assert any cognizable grounds for striking a Notice. As such, this Court should deny Defendant's Motion.

The Nevada Supreme Court has outlined the course that Capital Cases should follow. With specific reference to the procedure surrounding the Notice, Supreme Court Rule ("SCR") 250(4)(c) states:

> "No later than 30 days after the filing of an information or indictment, the state must file in the district court a notice of intent to seek the death penalty. The notice must allege all aggravating circumstances which the state intends to prove and allege with specificity the facts on which the state will rely to prove each aggravating circumstance."

The Court has noted that its purpose in promulgating SCR 250(4)(c) was to "ensure that defendants in capital cases receive notice sufficient to meet due process requirements." State v. Dist. Court (Marshall), 116 Nev. 953, 959, 11 P.3d 1209, 1212 (2000). Generally, the Court has only held Notices invalid where Notices are facially at variance with SCR 250(4)(c). See e.g. Redeker v. Dist. Court, 122 Nev. 164, 168, 127 P.3d 520, 523 (2006).

The Court's interpretation of SCR 250(4)(c) has strictly tracked the Rule's language. The Rule itself begins with a time limitation: "[n]o later than 30 days after the filing of an information or indictment, the state must file in the district court a notice of intent to seek the

death penalty." SCR 250(4)(c). In Marshall, the Court confirmed the clear meaning and validity of the timeliness provision when it held that a district court judge had not abused his discretion by striking the State's Notice on timeliness grounds, 116 Nev. at 965, 11 P.3d at 1216. The Court further noted that striking an untimely Notice is warranted unless the State shows good cause to file an amended or late Notice per SCR 250(4)(d). Id.

SCR 250(4)(d) allows a district court to permit the State to file an untimely or amended Notice "[u]pon a showing of good cause . . . ." In Marshall, the Court set the extreme limits of good cause and noted that a finding of good cause "rested within the district court's sound discretion." Bennett v. Dist. Court, 121 Nev. 802, 810-11, 121 P.3d 605, 611 (2005) (citing Marshall. 116 Nev. at 965, 11 P.3d at 1216). Thus, the Court has required strict adherence to SCR 250(4)(c) with regard to the timeliness of Notices, and a Notice at variance with the Rule, absent a finding of good cause, provides firm grounds for a motion to strike. However, so long as the Notice facially complies with the timing language of SCR 250(4)(c), it will not be stricken on timing grounds. Blake v. State, 121 Nev. 779, 799, 121 P.3d 567, 580 (2005).

There are further grounds to support the striking of all or part of a Notice where the Notice fails with regard to the alleging of aggravating circumstances. In relevant part, SCR 250(4)(c) states, "[t]he notice must allege all aggravating circumstances which the state intends to prove and allege with specificity the facts on which the state will rely to prove each aggravating circumstance." As a preliminary matter, the Court has held that the aggravating circumstances alleged in the Notice must actually be aggravating circumstances recognized and defined in NRS 200.033. Hidalgo v. Dist. Court, 124 Nev. 330, 337, 184 P.3d 369, 374 (2008). In Hidalgo, the Court ordered two aggravating circumstances listed in the State's Notice to be stricken because they were deficient as they were not aggravating circumstances per NRS 200.033. Id.

Beyond that, the Court has also required strict adherence to the specificity language of SCR 250(4)(c). In Redeker, the Court held that a Notice is facially insufficient where it fails to allege with specificity facts that would prove the alleged aggravating circumstances, 122

Nev. at 168, 127 P.3d at 523. The Court held that pursuant to SCR 250(4)(c), "the specific supporting facts are to be stated directly in the notice itself." Id. at 169, 127 P.3d at 523. In addition to the mere recitation of the requisite facts, the Notice must present a coherent and clear statement of facts to support the aggravators. Hidalgo, 124 Nev. at 338-39, 184 P.3d at 375-76 (noting the insufficiency of the confusing language used in the notice). In Hidalgo, the Court found grounds for striking the State's Notice where, "the principal problem with the notice of intent . . . [was] not the lack of factual detail." Id. at 339, 184 P.3d at 376. Instead, the Court held that the Notice should be stricken because the State presented its factual support "in an incomprehensible format such that it fail[ed] to meet the due process requirements of SCR 250(4)(c)." Id.

The degree to which the Court's interpretation of SCR 250(4)(c) tracks the rule's plain language is not surprising. SCR 250 is a "valid product of [the Court's] inherent authority to regulate procedure in criminal cases." Marshall, 116 Nev. at 968, 11 P.3d at 1218. As such, the grounds required to strike a Notice are found, as the Court's decisions reveal, where the Notice fails to comply with the language of SCR 250(4)(c) on its face. See e.g. Redeker, 122 Nev. at 168, 127 P.3d at 523; Marshall, 116 Nev. at 965, 11 P.3d at 1216.

Here, Defendant does not base his Motion on any grounds that have been held to be sufficient to strike a Notice. Further, Defendant does not cite any relevant authority that should compel this Court to grant his motion. Defendant does not suggest that the State's Notice is deficient due to a lack of specificity, that it is untimely, that it is incomprehensible in any way that would undermine the due process motivations of SCR 250(4)(c), or indeed even reference any particular aspect of the State's Notice whatsoever.

The reason for Defendant's failure to allege any specific deficiencies with the State's Notice seems clear: there are none. In the instant case, the State's Notice was filed timely on March 8, 2013, 25 days after Defendant was indicted. The Notice lists the aggravating circumstances that the State intends to prove and cites to the relevant portions of NRS 200.033 where those circumstances are defined. The Notice also supports the aggravating

circumstances with a specific, coherent, and comprehensible recitation of the relevant facts on which the allegations of aggravating circumstances are based.

In short, Defendant has not alleged any cognizable grounds to support his Motion to Strike. Defendant's sole cited basis for his Motion to Strike is the cost of capital punishment and attendant policy concerns. Such a ground has not been recognized as a legitimate basis for invalidating a Notice and is contrary to the Nevada Supreme Court's precedent regarding the interpretation of SCR 250(4)(c). Because Defendant fails to cite any relevant authority, allege any cognizable ground for relief, or even specifically address the Notice at issue, his Motion is frivolous and warrants no serious consideration by this Court and should be denied.

II. DEFENDANT PROVIDES NEITHER LEGAL JUSTIFICATION NOR SUFFICIENT REASON TO STAY PROCEEDINGS

Defendant moves, in the alternative to his Motion to Strike, for this Court to issue a "stay of capital proceedings" until the completion of the legislative audit mandated by Assembly Bill ("AB") 444. Defendant argues that a stay should be granted because "[t]he outcome of this audit may well reflect that the costs of [the] death penalty can not be justified by the meager results." DM 17. Defendant's Motion should be denied as he fails to cite any relevant authority to support his extraordinary request for a stay of a criminal trial. Further, Defendant asks this Court to interject itself into the purview of the Legislature and issue a stay that is contrary to the expressed prerogatives of the Nevada Supreme Court.

In general, courts have a limited ability to stay proceedings. Adler v. State, 93 Nev. 521, 522, 569 P.2d 403, 404 (1977). Defendant provides no statutory, procedural, or case authority that would permit a stay of the proceedings pending the outcome of a legislative audit. The Legislature has outlined a comprehensive framework for the issuance of stays in Capital Cases. See e.g., NRS 176.486 (granting district courts the authority to stay execution of a death sentence when a post-conviction habeas petition has been filed); NRS 176.487 (outlining the criteria that the district court should use in determining whether or to issue a stay of execution pursuant to a post-conviction habeas petition). The Nevada Rules of

Appellate Procedure also provide significant guidance on the subject of stays. See NRAP 8(a) (authorizing a motion for a stay of proceedings in district court pursuant to an appeal). However, the distinction between these mechanisms and the instant case is that Defendant has neither been convicted nor sentenced. He is not pursuing an appeal from a judgment of conviction or the denial of a Petition. Rather, in effect, Defendant is asking this Court for an indefinite continuance.

The District Court, of course, does have discretion to grant a continuance as long as the requesting party has shown good cause to request one based on the totality of the circumstances. State v. Nelson, 118 Nev. 399, 46 P.3d 1232 (2002). However, here, Defendant asserts no good cause to request a continuance—and indeed did not actually request one. Rather, he merely asserts that this Court should grant his Motion because the Legislature may or may not alter or abolish capital punishment in this State based on the results of an audit that may or may not show any dispositive findings. If for no other reason than that Defendant has neither been convicted nor sentenced, this Motion is frivolous and exceedingly premature. Defendant is essentially asking this Court to issue a moratorium on all Capital Cases. No fair interpretation of the notion of good cause could find that asking the District Court to intrude into the Legislative spectrum on the basis of unfounded speculation on the possible future actions of the Legislature meets that reasonable standard.

Defendant relies on the passage of AB 444 to support his Motion. He references several statements from concerned people who addressed the Legislature on various subjects at the hearings and meetings pertaining to AB 444. DM 5-6. In the first place, Defendant's argument, which notes the passage of a bill designed to study the fiscal costs of Capital proceedings while at the same asking for an indefinite cessation of those proceedings, is a contradiction unto itself. Beyond that, however, the language of the Bill itself makes no statement regarding any potential changes or actions that the Legislature might take after the audit is performed. 2013 Nevada Laws Ch. 469 (A.B. 444). The stated purpose of the bill is to study and assess the fiscal costs of the death penalty in Nevada. Id. The limited scope of the Bill was addressed in committee. NV Assem. Comm. Min., 5/9/2013, Nevada Assembly

Committee Minutes, 5/9/2013 (statement of Chair Ohrenschall)) ("The bill is crafted to be dispassionate. It is neither for nor against the death penalty." Nowhere in the plain language of AB 444 or in its Legislative history is there any support for Defendant's Motion to Stay Capital Proceedings.

Finally, at the outset of its Rule regulating the procedure of Capital Cases, the Nevada Supreme Court states:

> "The purposes of this rule are: to ensure that capital defendants receive fair and impartial trials, appellate review, and post-conviction review; to minimize the occurrence of error in capital cases and to recognize and correct promptly any error that may occur; and to facilitate the just and *expeditious final disposition* of all capital cases." SCR 250(1) (emphasis added).

Bearing in mind the Nevada Supreme Court's stated desire to ensure fair and expedient resolution of Capital Cases, as well as the State's legitimate interest in the swift and effective administration of justice, and the Defendant's and all Defendants' Constitutional rights to a speedy trial, Defendant's Motion to Stay Capital Proceedings is an extraordinary request.

Defendant's Motion, devoid of any good cause, relevant authority, or statutory guidance, is merely a disguised attempt to have this Court issue a moratorium. Defendant has attached twenty-eight exhibits to his Motion. The vast majority of those exhibits pertain to examples of State Legislatures across the United States exercising their inherent power to regulate, define, and administer crime and punishment within their borders, see e.g. Patterson v. New York, 432 U.S. 197, 201-02, 97 S. Ct. 2319, 2322 (1977). The Legislature has shown by its passage of AB 444 that it is more than capable of enacting legislation in this area. Had it desired to issue a moratorium, then it could have very easily done so in the legislation. Absent this Legislative directive, Defendant's Motion is not supported by AB 444 and should be denied.

//

//

//

//

CONCLUSION

Defendant's Motion to Strike the State's Notice of Intent to Seek the Death Penalty does not assert any cognizable ground to strike a Notice. Furthermore, Defendant's Motion, in the alternative, for a Stay of Capital Proceedings asks this Court to grant extraordinary relief without citing any relevant authority or asserting any good cause. Based on the foregoing arguments, the State respectfully asks that Defendant's Motions be denied.

DATED this 25th day of July, 2013.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Marc Digiacomo
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955

CERTIFICATE OF FACSIMILE TRANSMISSION AND/OR ELECTRONIC MAIL

I hereby certify that service of State's Opposition to Defendant's Motion To Strike The State's Notice Of Intent To Seek The Death Penalty Based On The Cost Of Capital Punishment And Attendant Policy Considerations, Or, In The Alternative, Motion To Stay Capital Proceedings Pending The Outcome Of The Audit Related To Assembly Bill 444, was made this 25th day of July, 2013, by facsimile transmission and/or e-mail to:

IVETTE MANINGO, ESQ.
iamaningo@iamlawnv.com

ANTHONY SGRO, ESQ.
tsgro@pattisgrolewis.com
FAX #386-2737

BY: /s/ J. Robertson
J. Robertson
Employee of the District Attorney's Office

13F00482A/jr-mvu

C:\Program Files\Neevia.Com\Document Converter\temp\4582560-5399073.DOC

RPLY
IVETTE A. MANINGO, ESQ.
Nevada Bar No. 7076
LAW OFFICES OF IVETTE A. MANINGO
720 South Seventh Street, 3rd Floor
Las Vegas, Nevada 89101
(702) 385-9595
iamaningo@iamlawnv.com

ANTHONY P. SGRO, ESQ.
Nevada Bar No.: 3811
PATTI, SGRO, LEWIS & ROGER
720 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: (702) 385-9595
Fax: (702) 386-2737
tsgro@pslrfirm.com

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

MAURICE MANUEL SIMS,
#2684920

Defendant

CASE NO. C287414-1
DEPT. III

REPLY TO STATE'S OPPOSITION TO MOTION TO STRIKE THE STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY BASED ON THE COST OF CAPITAL PUNISHMENT AND ATTENDANT POLICY CONSIDERATIONS, OR IN THE ALTERNATIVE, MOTION TO STAY CAPITAL PROCEEDINGS PENDING THE OUTCOME OF THE AUDIT RELATED TO ASSEMBLY BILL 444

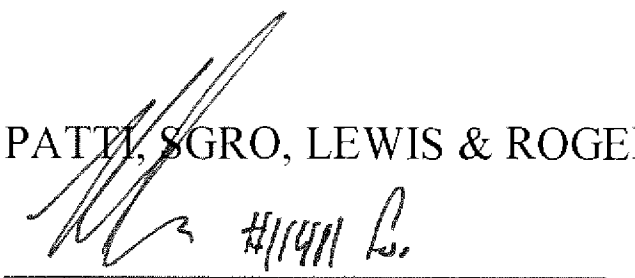
COMES NOW, the Defendant, MAURICE MANUEL SIMS, by and through his attorneys of record, IVETTE A. MANINGO, ESQ. and ANTHONY P. SGRO, ESQ., of PATTI, SGRO, LEWIS & ROGER, and files his Reply to the State's Motion to Strike the State's Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy

Considerations or in the Alternative Motion to Stay Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444.

This Reply is made and based on the following points and authorities and any oral argument at the time set for hearing on the Motion.

DATED this 3rd day of September, 2013.

PATTI, SGRO, LEWIS & ROGER



ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811
720 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorneys for Defendant

POINTS AND AUTHORITIES

In its Opposition, the State argues that the Defendant is precluded from requesting that this Court strike the State's Notice of Intent to Seek the Death penalty, as the grounds for the motion have not been previously recognized by the Nevada Supreme Court. However, the State's specious assertion is undermined by the fact that the Defendant requests the instant relief based upon the recent enactment of a death penalty audit by the Nevada State Legislature. As the Act creating the audit was passed on June 10th, 2013, less than two (2) months prior to the State's Opposition, it is highly unlikely that the Supreme Court would have had opportunity to rule on the instant issues within such a short time frame.

As to the numerous public policy considerations, sociological factors, and issues of judicial economy cited by the Defendant in his Motion, the State has failed to address any of these factors, or the fiscal impact of the death penalty on the State of Nevada. Assembly Bill 444 has only recently been passed, and the implications that it has on pending death penalty cases is unclear. However, the Nevada Supreme Court has repeatedly held that courts shall look to reason and

public policy to discern legislative intent. *Langon v. Matamoros*, 121 Nev. 142, 144, 111 P.3d 1077, 1078 (2005); See also *State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).

Given the trend in similar jurisdictions towards abolishing the death penalty, in tandem with the Legislature's interest in assessing the costs of the death penalty, the Defendant is simply requesting that he, the Court, and the State of Nevada be spared the expense of a lengthy capital proceeding that may be subsequently invalidated by the future abolishment of the death penalty in Nevada. As such, Defendant requests that this Court strike the Notice of Intent to Seek the Death Penalty, or in the alternative, stay capital proceedings pending the outcome of the audit.

CONCLUSION

For above reasons, the Defendant respectfully requests that this Court strike the Notice of Intent to Seek the Death Penalty against Defendant Sims. In the alternative Mr. Sims requests that the capital proceedings against him be stayed until the resolution of the audit prescribed in Assembly Bill 444.

DATED this 3rd day of September, 2013.

PATTI, SGRO, LEWIS & ROGER

M11481

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811
720 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of September 2013, I served a true and correct copy of the foregoing document entitled: REPLY TO STATE'S OPPOSITION TO MOTION TO STRIKE THE STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY BASED ON THE COST OF CAPITAL PUNISHMENT AND ATTENDANT POLICY CONSIDERATIONS, OR IN THE ALTERNATIVE, MOTION TO STAY CAPITAL PROCEEDINGS PENDING THE OUTCOME OF THE AUDIT RELATED TO ASSEMBLY BILL 444 as indicated below:

_____ sending a copy via facsimile to the parties herein, as follows; and/or

_✓_ sending a copy via electronic mail, and/or

_____ placing the original copy in a sealed envelope, first-class, postage fully pre-paid thereon, and depositing the envelope in the U.S. mail as Las Vegas, Nevada addressed as follows:

PAM WECKERLY, ESQ.
MARC DIGIACOMO, ESQ.
OFFICE OF THE DISTRICT ATTORNEY
200 Lewis Avenue
Las Vegas, NV 89155
Fascimile: (702) 477-2922
marc.digiacomo@ccdanv.com
Pamela.Weckerly@ccdanv.com

IVETTE A. MANINGO, ESQ.
Nevada Bar No. 7076
Law Offices of Ivette A. Maningo
720 S. 7th Street, 3rd Floor
Las Vegas, Nevada 89101
iamaningo@iamlawnv.com

CARL ARNOLD, ESQ.
1148 Maryland Pkwy.
Las Vegas, NV 89104
Lvcega1@yahoo.com

LANCE HENDRON, ESQ.
625 S. 8th Street
Las Vegas, NV 89101
lance@hendronlaw.com

ALZORA JACKSON, ESQ.
OFFICE OF THE SPECIAL PD
330 S. Third Street, 8th Floor
Las Vegas, NV 89155
ajackson@co.clark.nv.us

Michelle Pierre
An employee of Patti, Sgro, Lewis & Roger

SUPP
IVETTE A. MANINGO, ESQ.
Nevada Bar No. 7076
LAW OFFICES OF IVETTE A. MANINGO
720 South Seventh Street, 3rd Floor
Las Vegas, Nevada 89101
(702) 385-9595
iamaningo@iamlawnv.com

ANTHONY P .SGRO, ESQ.
Nevada State Bar No. 3811
PATTI, SGRO, & LEWIS
720 South Seventh Street, 3rd Floor
Las Vegas, NV 89101
(702) 385-9595
tsgro@pattisgrolewis.com
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

MAURICE MANUEL SIMS,
#2684920

Defendant.

CASE NO. C287414

DEPT. III

SUPPLEMENTAL EXHIBITS (#29-48) IN SUPPORT TO MOTION TO STRIKE THE STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY BASED ON THE COST OF CAPITAL PUNISHMENT AND ATTENDANT POLICY CONSIDERATIONS, OR IN THE ALTERNATIVE, MOTION TO STAY CAPITAL PROCEEDINGS PENDING THE OUTCOME OF THE AUDIT RELATED TO ASSEMBLY BILL 444

COMES NOW, the Defendant, MAURICE MANUEL SIMS, by and through his attorneys of record, IVETTE A. MANINGO, ESQ. and ANTHONY P. SGRO, ESQ., of PATTI, SGRO, LEWIS & ROGER, and files his Supplemental Exhibits to Motion to Strike the State's

Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy Considerations or in the Alternative Motion to Stay Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444.

Attached to this document are supplemental exhibits to the instant motion that will be incorporated into a PowerPoint presentation at the time set for hearing on the matter.

DATED this 9 day of September, 2013.

PATTI, SGRO, LEWIS & ROGER

ANTHONY P. SGRO, ESQ.
Nevada Bar No. 3811
720 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of September 2013, I served a true and correct copy of the foregoing document entitled: SUPPLEMENTAL EXHIBITS IN SUPPORT OF MOTION TO STRIKE THE STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY BASED ON THE COST OF CAPITAL PUNISHMENT AND ATTENDANT POLICY CONSIDERATIONS, OR IN THE ALTERNATIVE, MOTION TO STAY CAPITAL PROCEEDINGS PENDING THE OUTCOME OF THE AUDIT RELATED TO ASSEMBLY BILL 444 as indicated below:

✓ sending a copy via facsimile to the parties herein, as follows; and/or

✓ sending a copy via electronic mail, and/or

_____ placing the original copy in a sealed envelope, first-class, postage fully pre-paid thereon, and depositing the envelope in the U.S. mail as Las Vegas, Nevada addressed as follows:

PAM WECKERLY, ESQ.
MARC DIGIACOMO, ESQ.
OFFICE OF THE DISTRICT ATTORNEY
200 Lewis Avenue
Las Vegas, NV 89155
Fascimile: (702) 477-2922
marc.digiacomo@ccdanv.com
Pamela.Weckerly@ccdanv.com

IVETTE A. MANINGO, ESQ.
Nevada Bar No. 7076
Law Offices of Ivette A. Maningo
720 S. 7th Street, 3rd Floor
Las Vegas, Nevada 89101
iamaningo@iamlawnv.com

CARL ARNOLD, ESQ.
1148 Maryland Pkwy.
Las Vegas, NV 89104
Lvcega1@yahoo.com

LANCE HENDRON, ESQ.
625 S. 8th Street
Las Vegas, NV 89101
lance@hendronlaw.com

ALZORA JACKSON, ESQ.
OFFICE OF THE SPECIAL PD
330 S. Third Street, 8th Floor
Las Vegas, NV 89155
ajackson@co.clark.nv.us

An employee of Patti, Sgro, Lewis & Roger

EXHIBIT 29

Executions by Year

Last updated August 6, 2013 following an execution in Florida

Total since 1976 (including 2013): 1343
Executions in 2013: 23
Executions in 2012: 43
Executions in 2011: 43

Executions by Year Since 1976

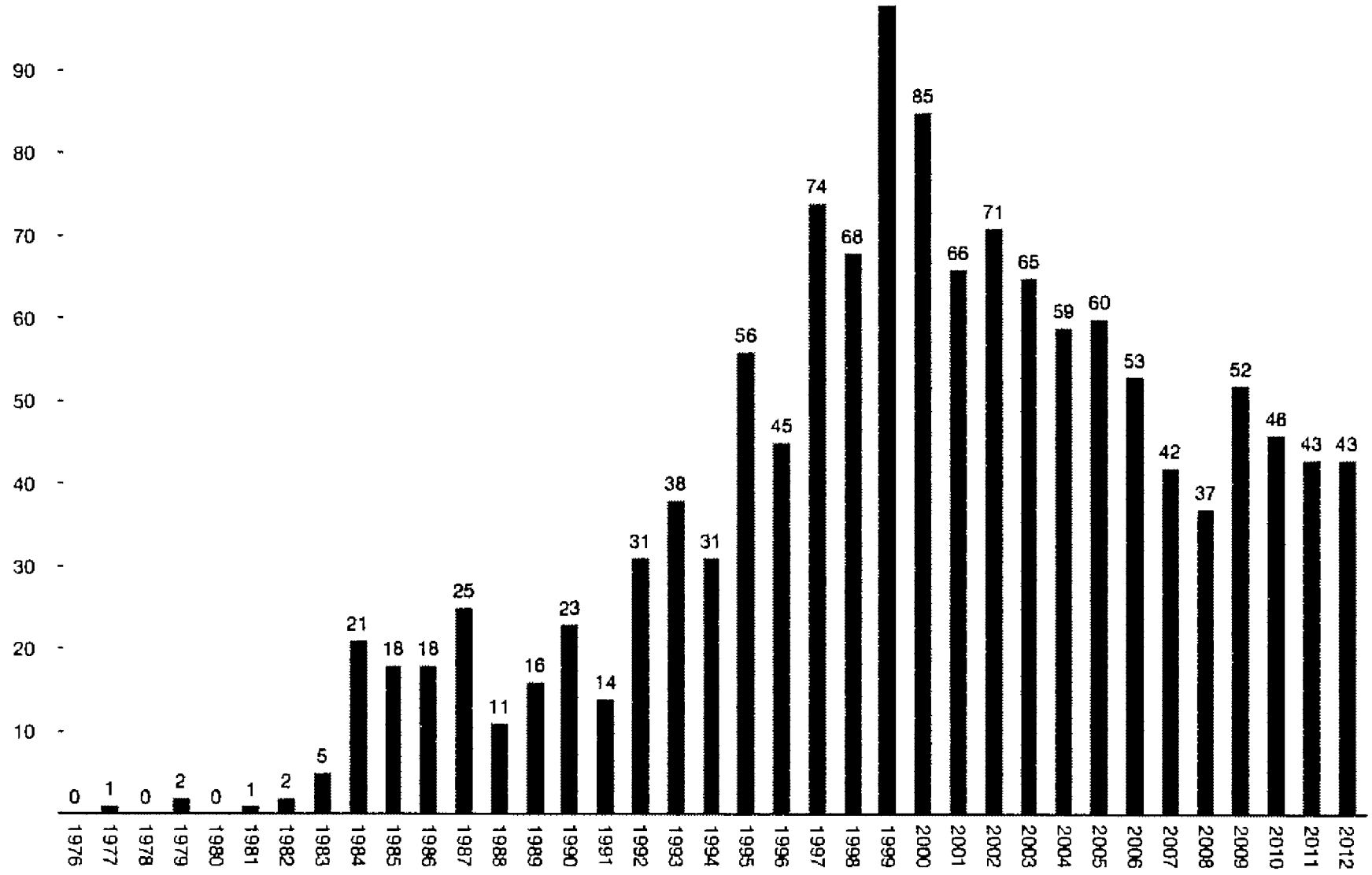
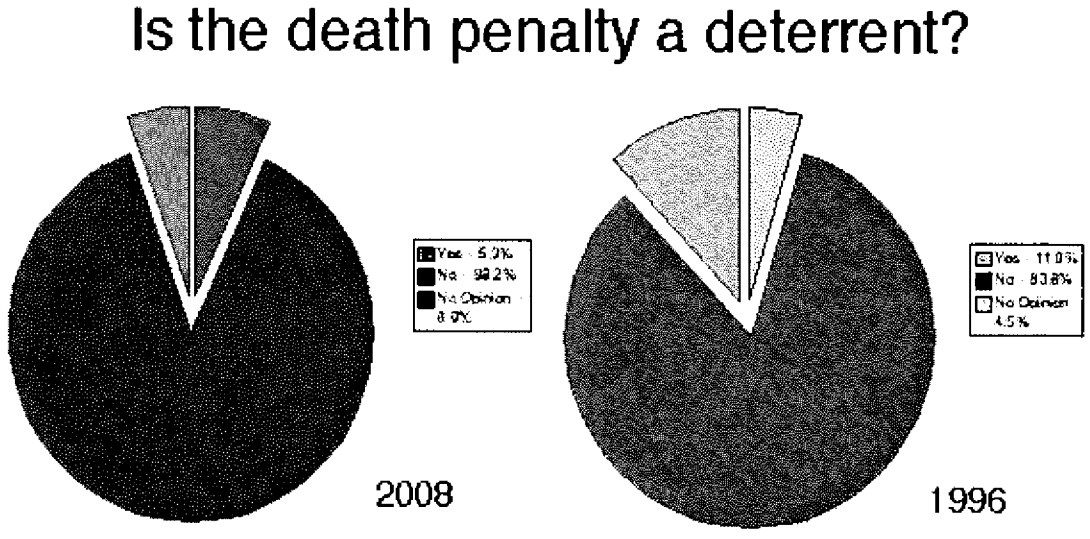


EXHIBIT 30

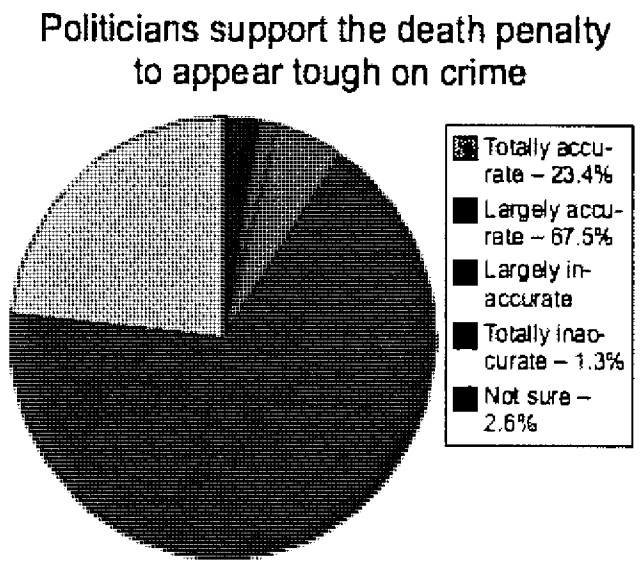
Study: 88% of criminologists do not believe the death penalty is an effective deterrent

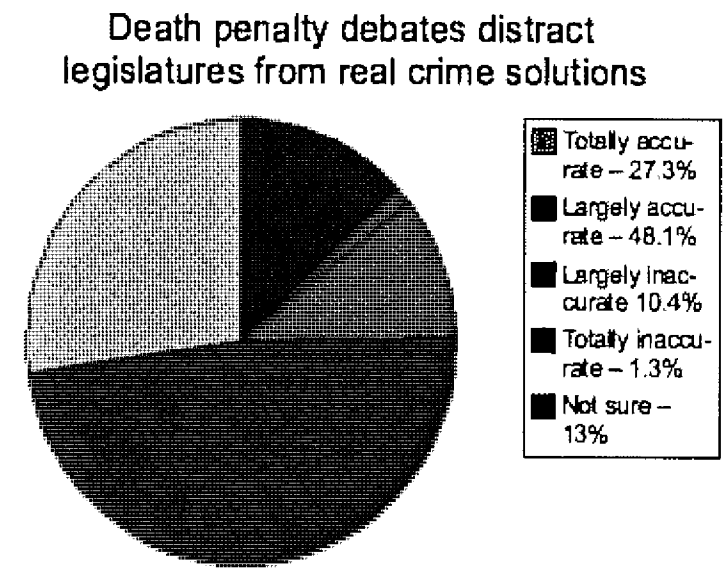
A recent study by Professor Michael Radelet and Traci Lacock of the University of Colorado found that 88% of the nation's leading criminologists do not believe the death penalty is an effective deterrent to crime. The study, *Do Executions Lower Homicide Rates? The Views of Leading Criminologists* (http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf), published in the *Journal of Criminal Law and Crimonology*, concluded, "There is overwhelming consensus among America's top criminologists that the empirical research conducted on the deterrence question fails to support the threat or use of the death penalty." A previous study in 1996 had come to similar conclusions.



The criminologists surveyed included - 1) Fellows in the American Society of Criminology (ASC), (2) Winners of the ASC's Sutherland Award, the highest award given by that organization for contributions to criminological theory, or (3) Presidents of the ASC between 1997 and the present. Those presidents before 1997 had been included in the prior survey. Respondents were asked to base their answers on existing empirical research, not their views on capital punishment.

Nearly 78% of those surveyed said that having the death penalty in a state does not lower the murder rate. In addition, 91% of respondents said politicians support the death penalty in order to appear tough on crime – and 75% said that it distracts legislatures on the state and national level from focusing on real solutions to crime problems. Over all, 94% agreed that there was little emperical evidence to support the deterrent effect of the death penalty. And 90% said the death penalty had little effect overall on the committing of murder. Additionally, 91.6% said that increasing the frequency of executions would not add a deterrent effect, and 87.6% said that speeding up executions wouldn't work either.





Public opinion also reflects these findings. In a 2006 Gallup Poll, only 34% of respondents agreed that "the death penalty acts as a deterrent to the commitment of murder, that it lowers the murder rate." In 2004, 62% of people said the death penalty was not a deterrent. By contrast, in 1985, 62% believed the death penalty acted as a deterrent to murder.

EXHIBIT 31

Deterrence: States Without the Death Penalty Have Had Consistently Lower Murder Rates

Year	1991 (http://www.deathpenaltyinfo.org/documents/coop1991.pdf)	1992 (http://www.deathpenaltyinfo.org/documents/coop1992.pdf)	1993 (http://www.deathpenaltyinfo.org/documents/coop1993.pdf)	(http://www.deathpe
Murder Rate in Death Penalty States*	9.94	9.51	9.69	
Murder Rate in Non-death Penalty States	9.27	8.63	8.81	7.88
Percent Difference	7%	10%	10%	

(click on year to see the murder rates and calculations involved in this analysis, provided by David Cooper)
* Includes Kansas and New York in the years after they adopted the death penalty, 1994 and 1995 respectively. New Jersey and New York ended the death penalty in the latter part of 2007 and will not be counted as death penalty states in 2008.

Notes:

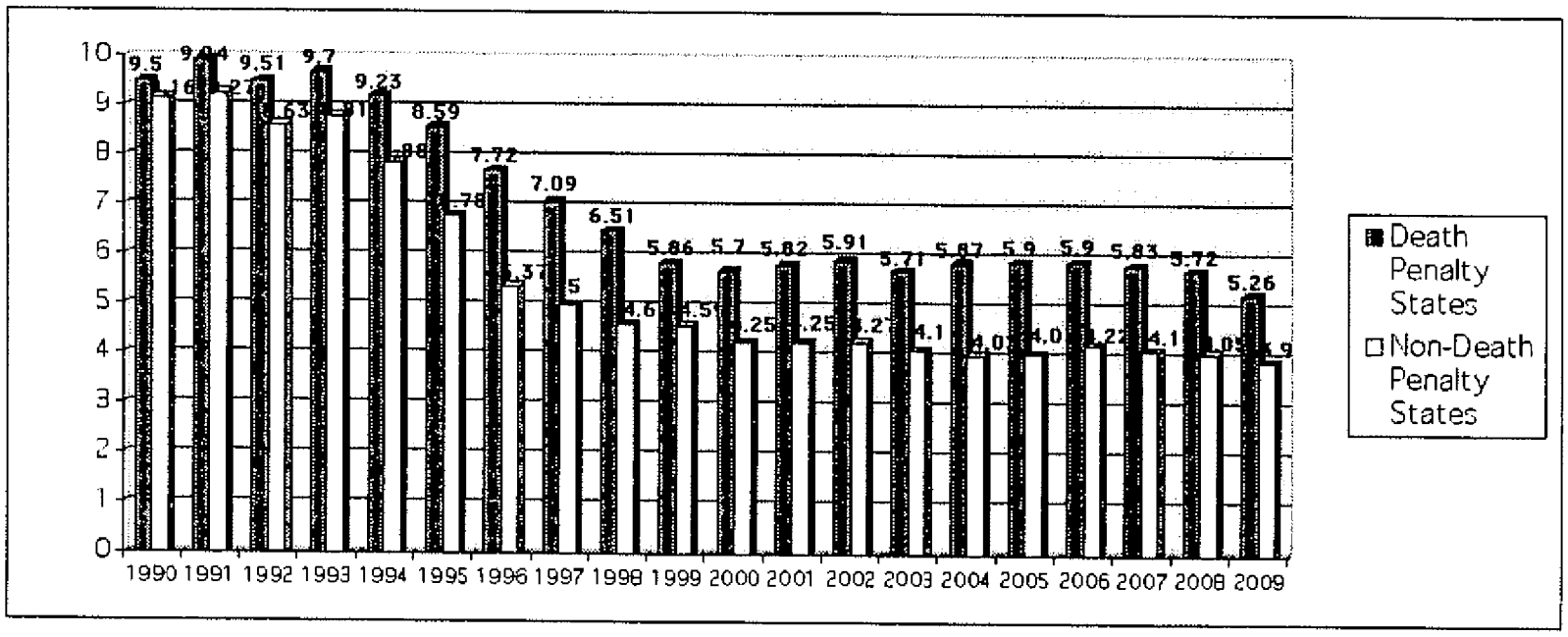
Populations are from the U.S. Census estimates for each year.

Murder rates are from the FBI's "Crime in the United States" and are per 100,000 population.

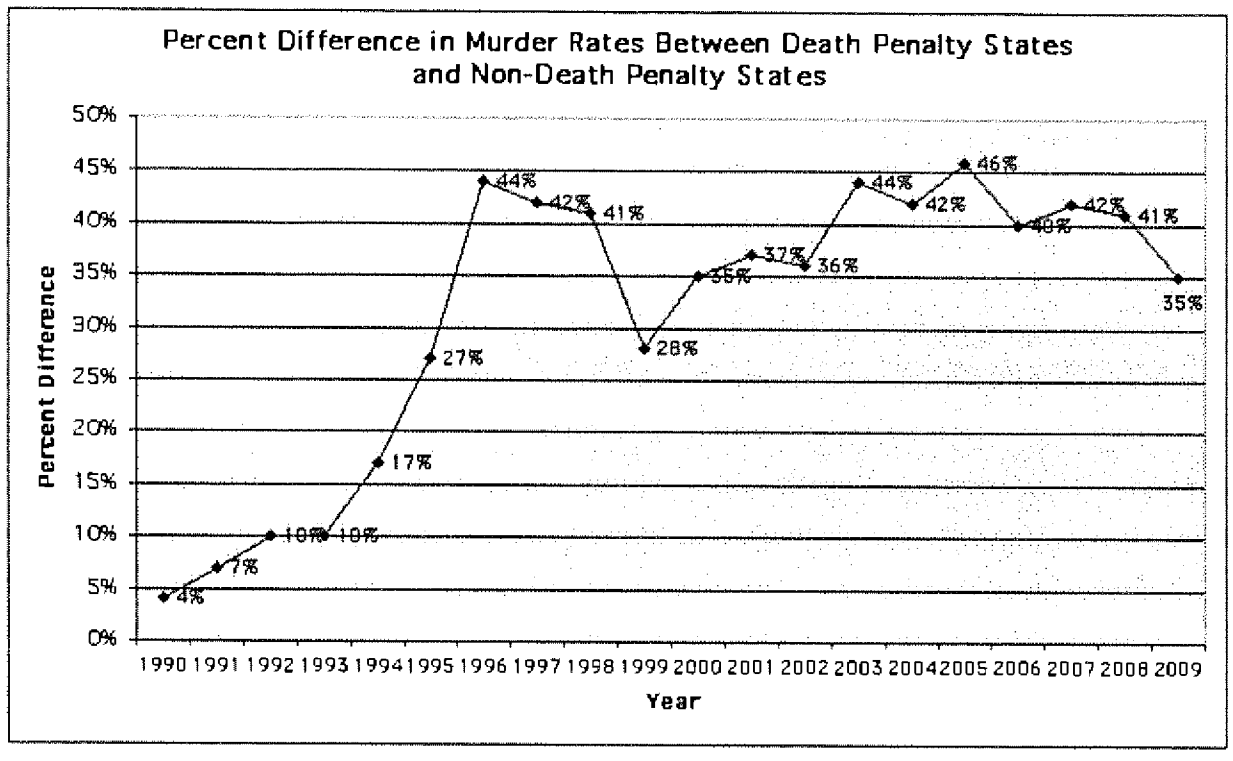
The murder rate for the region (death penalty states or non-death penalty states) is the total number of murders in the region divided by the total population (and then multiplied by 100,000)

In calculations that include Kansas and New York, Kansas is counted as a death penalty state from 1994 and New York from 1996, since New York's law did not become effective until September, 1995.

Murder Rates in Death Penalty States and Non-Death Penalty States



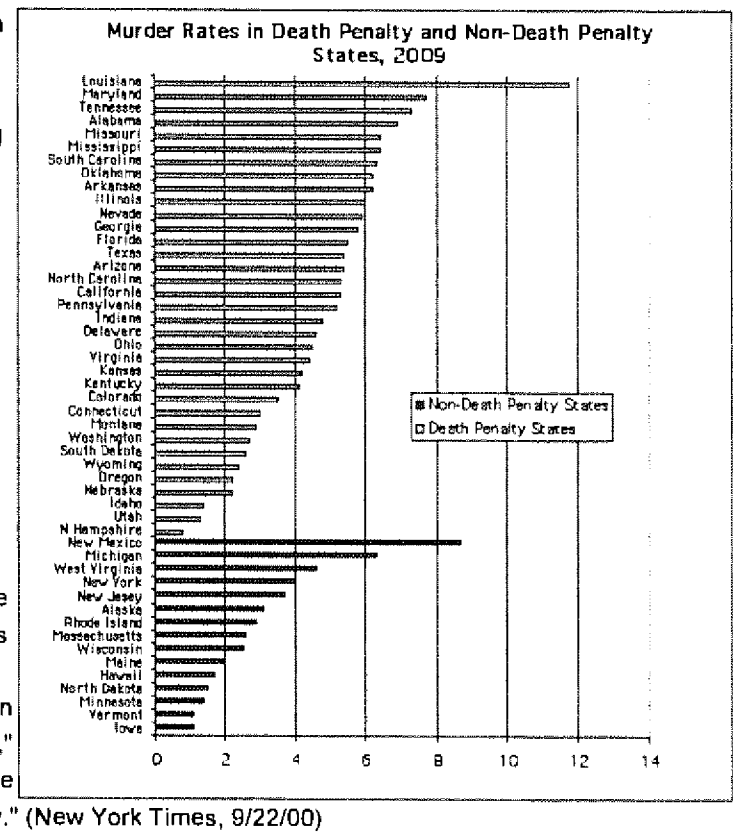
The murder rate in non-death penalty states has remained consistently lower than the rate in states with the death penalty, and the gap has grown since 1990.



(/article.php?scid=12&did=169)

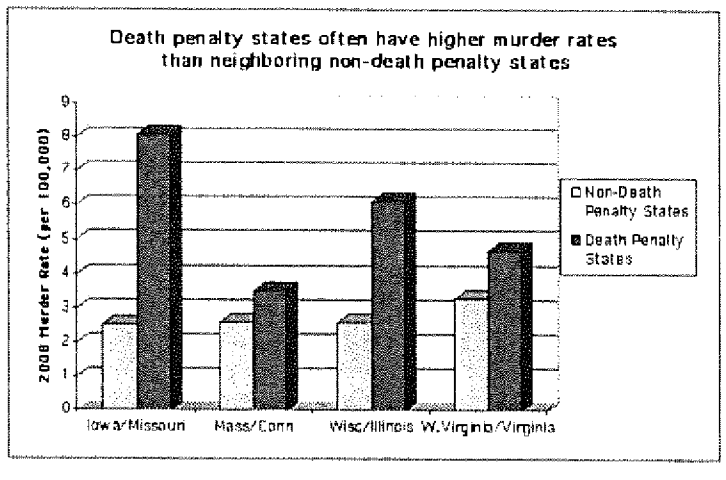
STUDIES COMPARING STATES WITH THE DEATH PENALTY AND STATES WITHOUT

Michigan Lawmakers Reaffirm State's Longstanding Ban on Capital Punishment - In a vote upholding the state's longstanding abolition of the death penalty, Michigan lawmakers refused to support a measure that would have put capital punishment before state voters in a referendum. The vote fell 18 short of the 2/3 required for passage. During a lengthy House debate regarding the bill, Representative Jack Minor (D-Flint) told his colleagues that studies show crime rates are lower in states without the death penalty. He noted, "The death penalty's not a deterrent. In fact, the figures would suggest it's just the opposite." Other opponents of the measure stated that "revenge" would not help victims' families. Michigan has not had the death penalty for 158 years, and voters have not addressed the issue since its abolition was included in the 1963 revision of the state constitution. Michigan is one of 12 states in the U.S. that does not have a death penalty. (Michigan Live, March 19, 2004) The state was the first English speaking government in the world to ban the practice.



States Without the Death Penalty Have Better Record on Homicide Rates - A new survey by the New York Times found that states without the death penalty have lower homicide rates than states with the death penalty. The Times reports that ten of the twelve states without the death penalty have homicide rates below the national average, whereas half of the states with the death penalty have homicide rates above. During the last 20 years, the homicide rate in states with the death penalty has been 48% - 101% higher than in states without the death penalty. "I think Michigan made a wise decision 150 years ago," said the state's governor, John Engler, a Republican, referring to the state's abolition of the death penalty in 1846. "We're pretty proud of the fact that we don't have the death penalty." (New York Times, 9/22/00)

States Without the Death Penalty Fared Better Over Past Decade - In the past ten years, the number of executions in the U.S. has increased while the murder rate has declined. Some commentators have maintained that the murder rate has dropped because of the increase in executions (see, e.g., W. Tucker, "Yes, the Death Penalty Deters," Wall St. Journal, June 21, 2002). However, during this decade the murder rate in non-death penalty states has remained consistently lower than the rate in states with the death penalty.



When comparisons are made between states with the death penalty and states without, the majority of death penalty states show murder rates higher than non-death penalty states. The average of murder rates per 100,000 population in 1999 among death penalty states was 5.5, whereas the average of murder rates among non-death penalty states was only 3.6.

A look at neighboring death penalty and non-death penalty states show similar trends. Death penalty states usually have a higher murder rate than their neighboring non-death penalty states.

Return to Deterrence (http://www.deathpenaltyinfo.org/facts-about-deterrence-and-death-penalty)

See also Murder Rates (http://www.deathpenaltyinfo.org/murder-rates-nationally-and-state)

Tweet (http://twitter.com/share)

EXHIBIT 32

THE BLADE
One of America's Great Newspapers

Printed Monday, September 09, 2013

Family sues over botched Ohio execution

BY ERICA BLAKE
BLADE STAFF WRITER

OBJECT15147760-701d-42ea-a2bf-e30ecdf1fb8aWhen Michael Manning arrived to witness the May, 2006, execution of Joseph Lewis Clark, he was intent on watching justice served against his brother's killer.

Yesterday, Mr. Manning stood shoulder to shoulder with Clark's brother to speak out against the lengthy and seemingly painful execution.

Mr. Manning joined members of the Clark family as they spoke about a lawsuit filed early yesterday in U.S. District Court in Cincinnati. Filed by Clark's mother, Irma Clark, the lawsuit asks for monetary damages. But those involved said that the larger goal is to achieve change.

"I believe in the constitutionality part of [the death penalty]," said Mr. Manning, who is not a party in the lawsuit. "Even though I do believe in the death penalty, I also believe that no one should have to die a horrible death and that's what Joseph did, died a horrible death."

Mr. Manning admitted that many members of his family do not agree with his alliance with the Clark family.

Those who witnessed Clark's execution saw a procedure that typically lasts approximately 10 minutes drag into one that lasted 86 minutes.

The execution team struggled for 25 minutes to find usable veins in Clark's arms before making the decision to proceed with just one intravenous shunt in his left arm.

OBJECT61d88cb6-ce7c-42f0-98f4-3ef6739287aaAfter uttering his final words, Clark lay extremely still, breathing shallowly.

A witness described the scene as one where Clark appeared to have fallen asleep, except for the occasional movement of his feet.

But after a few moments, Clark raised his head, shook it back and forth, and repeatedly declared, "It don't work."

Prior to his arrest, Clark had been a longtime intravenous drug user.

The execution team then closed a curtain to block witnesses' view of the execution chamber, but witnesses - including Mr. Manning - said Clark's moans and groans were audible through the glass.

Clark's brother, Dennis, said yesterday that no one from his family was at the execution per his brother's requests. He added that he does not condone his brother's actions but that he is concerned about the state's method of execution.

"What my brother did was wrong. He committed a crime, he did the time, and ultimately he paid the price," Mr. Clark said.

"I just want to see it done right," he added. "If it's done right, we wouldn't be here."

Clark was executed at the Southern Ohio Correctional Facility in Lucasville, Ohio, for the 1984 slaying of David Manning, a 23-year-old husband and father who was shot at a gas station on Airport Highway in South Toledo.

He received a life sentence for killing another clerk, Donald Harris, 21, the night before at a store on Hill Avenue.

Clark was arrested after shooting a third man, Robert Roloff, during a holdup at a bank ATM in Toledo three days after Mr. Manning's death. Mr. Roloff survived.

Attorney Alan Konop, who is representing the Clark family, said the lawsuit asks for $150,000 but ultimately any award would be up to a judge or jury. He added that more importantly, the family hopes to start an open and transparent discussion of the problems.

Clark's execution wasn't the only one plagued with problems, Mr. Konop said. On May 24, executioners had trouble inserting needles into the veins of Christopher Newton, who had insisted on the death penalty as a punishment for killing a cellmate. The execution team stuck him at least 10 times with needles to get in place the shunts through which chemicals are injected. Prison officials said the difficulty prison staff had finding Newton's veins resulted from the girth of the 6-foot, 265-pound inmate.

Mr. Konop said that both the Eighth Amendment of the U.S. Constitution and Ohio law require "a swift and humane execution procedure." He added that Clark's execution "failed to comply with these basic standards of civility."

Named in the lawsuit are Edwin Voorhies, warden of the Southern Ohio Correctional Facility, State Prisons Director Terry Collins, and 12 unnamed execution team members.

"This is an individual lawsuit by an individual family so we can merely ask for damages," Mr. Konop said. "The hope of the family is that this will give the state an opportunity to make changes."

Mr. Konop said that an independent autopsy conducted on Clark's body by Dr. L.J. Drogovic, chief medical examiner for Oakland County, Mich., concluded that Clark had numerous needle puncture wounds.

A spokesman for Attorney General's Marc Dann's office declined comment, saying that the corrections division had not yet been served the lawsuit.

Contact Erica Blake at:

eblake@theblade.com

or 419-213-2134.

EXHIBIT 33

February 25, 2009

Citing Cost, States Consider End to Death Penalty

By IAN URBINA

ANNAPOLIS, Md. — When Gov. Martin O'Malley appeared before the Maryland Senate last week, he made an unconventional argument that is becoming increasingly popular in cash-strapped states: abolish the death penalty to cut costs.

Mr. O'Malley, a Democrat and a Roman Catholic who has cited religious opposition to the death penalty in the past, is now arguing that capital cases cost three times as much as homicide cases where the death penalty is not sought. "And we can't afford that," he said, "when there are better and cheaper ways to reduce crime."

Lawmakers in Colorado, Kansas, Nebraska and New Hampshire have made the same argument in recent months as they push bills seeking to repeal the death penalty, and experts say such bills have a good chance of passing in Maryland, Montana and New Mexico.

Death penalty opponents say they still face an uphill battle, but they are pleased to have allies raising the economic argument.

Efforts to repeal the death penalty are part of a broader trend in which states are trying to cut the costs of being tough on crime. Virginia and at least four other states, for example, are considering releasing nonviolent offenders early to reduce costs.

The economic realities have forced even longtime supporters of the death penalty, like Gov. Bill Richardson of New Mexico, to rethink their positions.

Mr. Richardson, a Democrat, has said he may sign a bill repealing capital punishment that passed the House last week and is pending in a Senate committee. He cited growing concerns about miscarriages of justice, but he added that cost was a factor in his shifting views and was "a valid reason in this era of austerity and tight budgets."

Capital cases are expensive because the trials tend to take longer, they typically require more lawyers and more costly expert witnesses, and they are far more likely to lead to multiple appeals.

In New Mexico, lawmakers who support the repeal bill have pointed out that despite the added expense, most defendants end up with life sentences anyway.

That has been true in Maryland. A 2008 study by the Urban Institute, a nonpartisan public policy group, found that in the 20 years after the state reinstated the death penalty in 1978, prosecutors sought the death penalty in 162 felony-homicide convictions, securing it in 56 cases, most of which were overturned; the rest of the convictions led to prison sentences.

Since 1978, five people have been executed in Maryland, and five inmates are on death row.

Opponents of repealing capital punishment say such measures are short-sighted and will result in more crime and greater costs to states down the road. At a time when police departments are being scaled down to save money, the role of the death penalty in deterring certain crimes is more important than ever, they say.

"How do you put a price tag on crimes that don't happen because threat of the death penalty deters them?" said Scott Shellenberger, the state's attorney for Baltimore County, Md., who opposes the repeal bill.

Kent Scheidegger, legal director of the Criminal Justice Legal Foundation, an organization in Sacramento that works on behalf of crime victims, called the anticipated savings a mirage. He added that with the death penalty, prosecutors can more easily offer life sentences in a plea bargain and thus avoid trial costs.

But Eric M. Freedman, a death penalty expert at Hofstra Law School, said studies had shown that plea bargaining rates were roughly the same in states that had the death penalty as in states that did not.

"It makes perfect sense that states are trying to spend their criminal justice budgets better," he said, "and that the first place they look to do a cost-benefit analysis is the death penalty."

States are looking elsewhere as well.

Last year, in an effort to cut costs, probation and parole agencies in Arizona, Kentucky, Mississippi, New Jersey and Vermont reduced or dropped prison time for thousands of offenders who violated conditions of their release. In some states, probation and parole violators account for up to two-thirds of prison admissions each year; typical violations are failing drug tests or missing meetings with parole officers.

As prison crowding has become acute, lawsuits have followed in states like California, and politicians find themselves having to choose among politically unattractive options: spend scarce tax dollars on expanding prisons, loosen laws to stem the flow of incarcerations, or release some nonviolent offenders.

The costs of death penalty cases can be extraordinarily high.

The Urban Institute study of Maryland concluded that because of appeals, it cost as much as $1.9 million more for a state prosecutor to put someone on death row than it did to put a person in prison. A case that resulted in a death sentence cost $3 million, the study found, compared with less than $1.1 million for a case in which the death penalty was not sought.

In Kansas, State Senator Carolyn McGinn introduced a bill this month that would abolish the death penalty in cases sentenced after July 1. "We are in such a dire deficit situation, and we need to look at things outside the box to solve our budget problems," said Mrs. McGinn, a Republican. Kansas is facing a budget shortfall of $199 million, and Mrs. McGinn said that opting for life imprisonment without parole rather than the death penalty could save the state over $500,000 per capital case.

But skeptics contend that prosecutors will still be on salary and will still spend the same amount, just on different cases. In Colorado, lawmakers plan to consider a bill this week that would abolish the death penalty and use the savings to create a cold-case unit to investigate the state's roughly 1,400 unsolved

murders. While the police must continue investigating these cases, there is no money in the budget for that. A group of families who lost relatives in unsolved murders has lobbied lawmakers on the bill.

In Virginia, competing sentiments are evident in the legislature.

While lawmakers have proposed allowing prison officials to release low-risk offenders up to 90 days before the end of their sentences, citing a potential saving of $50 million, they are also considering expanding who is eligible for capital punishment to people who assist in killings but do not commit them and to people convicted of murdering fire marshals or auxiliary police officers who are on duty.

It is considered unlikely, however, that Gov. Tim Kaine, a Democrat who opposes capital punishment, would sign such a bill.

In 2007, New Jersey became the first state in a generation to abolish the death penalty.

That same year, a vote in Maryland to abolish the death penalty came up one vote short of passing. In December, however, a state commission on capital punishment recommended that Maryland abolish the death penalty because of the high cost and the danger of executing an innocent person.

EXHIBIT 34

What killed Illinois' death penalty

It wasn't the question of morality but the question of accuracy that led state to abolish capital punishment

March 10, 2011 | By Steve Mills, Tribune reporter

If there was one moment when Illinois' death penalty began to die, it was on Feb. 5, 1999, when a man named Anthony Porter walked out of jail a free man.

Sitting in the governor's mansion, George Ryan watched Porter's release on television and wondered how a man could come within 50 hours of being executed, only to be set free by the efforts of a journalism professor, his students and a private investigator.

"And so I turned to my wife, and I said, how the hell does that happen? How does an innocent man sit on death row for 15 years and gets no relief," Ryan recalled last year. "And that piqued my interest, Anthony Porter."

To be sure, by the time Porter was set free, the foundation of Illinois' death penalty system already had begun to erode by the steady stream of inmates who had death sentences or murder convictions vacated: Rolando Cruz and Alejandro Hernandez in the Jeanine Nicarico case, the men known as the Ford Heights Four, Gary Gauger.

But for decades, the debate over capital punishment rarely strayed from whether it was right or wrong, a moral argument that was waged mostly by a narrow group of attorneys and abolition supporters that could be easily dismissed. Public opinion polls showed little movement. Death sentences and executions hit record levels.

Inmates like the serial killer John Wayne Gacy, whose guilt was never in question, were put to death and caused little controversy. But when a miscarriage of justice was discovered and a death row inmate was set free, the police and prosecutors contended that it was an isolated incident, an anomaly. They got little argument.

In November 1998, the Center on Wrongful Convictions at Northwestern University hosted 29 exonerated death row inmates at a conference, putting a human face to the death penalty's errors. Then, with Porter's case still in the spotlight, plus a series of stories in the Chicago Tribune later that year that illuminated deep frailties in the state's system of capital punishment, the debate over the death penalty was transformed.

Suddenly, it was about accuracy. No longer were the mistakes anecdotal. The problems were systemic.

Opposition to the death penalty began to win new supporters, people who looked at the issue pragmatically, not just morally, and were dismayed by the mistakes. Politicians no longer saw the issue as a third rail with voters. Ryan, who declared a halt to all executions in 2000, found it did not cost him politically.

A decade after Ryan declared a moratorium, 61 percent of voters questioned in a poll did not even know the state still had a death penalty, reflecting a stalemate of sorts that had emerged between supporters of abolition and those who wanted to bring back capital punishment. No one was being put to death, yet death row again was receiving inmates, though at a slower pace than before the Ryan moratorium.

Had Republican Bill Brady won the November general election instead of Democrat Pat Quinn, the state still would have a death penalty, and the new governor almost certainly would have lifted the moratorium and allowed executions to resume.

Ultimately, supporters of abolition in the General Assembly — frustrated that sufficient reform had not been enacted and stung by the costs of trials and appeals — voted to abolish the death penalty. On Wednesday, Quinn signed abolition into law and commuted the sentences of 15 inmates who had been sentenced to death since the moratorium.

"That isolated image of Anthony Porter is crucial," said Lawrence Marshall, a former legal director of the Center on Wrongful Convictions and a key player in the abolition of the death penalty. "But it only makes a difference when it comes amidst all of those other incidents. It shows (the problems weren't) isolated. This was a trend."

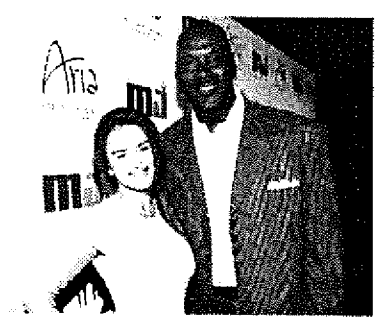
With Quinn's signature, Illinois became the fourth state to abandon the death penalty over the last decade, and the isolation of the use of capital punishment, mostly in the South, is a national trend, said Richard Dieter, executive director of the Death Penalty Information Center, which opposes capital punishment.

The New Jersey Legislature voted to drop the death penalty in 2007. A New York appeals court ruled the death penalty unconstitutional in 2004. And in 2009, the New Mexico Legislature voted to repeal capital punishment; Gov. Bill Richardson signed the bill into law.

Other states have convened panels to study the death penalty and have considered legislation to end it, prompted by the exonerations of condemned inmates; capital punishment's high cost, particularly in a down economy; and the widening support for life in prison without parole as an alternative sentence, Dieter said.

1 | 2 | Next

Featured Articles



Michael Jordan marries longtime girlfriend

Decoding the diabetic diet

Mormonism, Illinois have surprising history

MORE:

Steps can be taken to relieve or prevent night leg cramps

Alarms should sound on deal

EXHIBIT 35

The New York Times

April 11, 2012

Death Penalty Repeal Goes to Connecticut Governor

By **PETER APPLEBOME**

HARTFORD — After more than nine hours of debate, the Connecticut House of Representatives voted on Wednesday to repeal the state's death penalty, following a similar vote in the State Senate last week. Gov. Dannel P. Malloy, a Democrat, has said he will sign the bill, which would make Connecticut the 17th state — the 5th in five years — to abolish capital punishment for future cases.

Mr. Malloy's signature will leave New Hampshire and Pennsylvania as the only states in the Northeast that still have the death penalty. New Jersey repealed it in 2007. New York's statute was ruled unconstitutional by the state's highest court in 2004, and lawmakers have not moved to fix the law.

The vote, after more than two decades of debate and the 2009 veto of a similar bill by the governor at the time, M. Jodi Rell, a Republican, came against the backdrop of one of the state's most horrific crimes: a 2007 home invasion in Cheshire in which Jennifer Hawke-Petit and her daughters, Hayley, 17, and Michaela, 11, were held hostage and murdered, two of the three raped, and their house set afire by two habitual criminals who are now on death row. Ms. Hawke-Petit's husband, Dr. William A. Petit Jr., who was badly beaten but escaped, has since been an ardent advocate for keeping the death penalty.

The bill exempts the 11 men currently on death row, including Joshua Komisarjevsky and Steven J. Hayes, the men convicted of the Petit murders.

The measure was approved by a vote of 86 to 62, largely along party lines.

The legislation will make life in prison without possibility of parole the state's harshest punishment. It mandates that those given life without parole be incarcerated separately from other inmates and be limited to two hours a day outside the prison cell.

In a statement released late Wednesday night, Governor Malloy said the repeal put Connecticut in the same position as nearly every other industrialized nation on the death penalty.

"For decades, we have not had a workable death penalty," he said, noting that only one person has been executed in Connecticut in the last 52 years. "Going forward, we will have a system that allows us to put these people away for life, in living conditions none of us would want to experience. Let's throw away the key and have them spend the rest of their natural lives in jail."

Thirteen proposed amendments from supporters of capital punishment, most of which would have allowed the death penalty in certain cases, were defeated during the debate, in which many legislators told personal stories of the effects of violent crime. The lawmakers also invoked a wide variety of people, from mass murderers to Immanuel Kant to Sir Thomas More.

State Representative Patricia M. Widlitz, a Democrat from Branford and Guilford, said that like many members, she was torn over her vote. But she recalled a murder in her community and the difficulty residents went through in explaining it to local children. "I just couldn't reconcile telling them that it's O.K. for the government to kill after teaching them that killing is wrong, it's unacceptable, it's immoral," she said.

She added that the killer was sentenced to life without parole. "I think in many ways, that is a death sentence, with no chance of parole, no chance of doing anything with your life," she said.

Republican critics of the bill said the exemption for those currently awaiting execution cast a cloud over the vote, both because it undercut the moral argument of death penalty opponents and because future appeals or government action had the potential to spare the 11 men.

"Let's not mislead the public; let's not mislead ourselves" said the House minority leader, Lawrence Cafero Jr., of Norwalk. "If it is the will of this chamber that this state is no longer in the business of executing people, then let's say it and do it. You cannot have it both ways."

But Democratic legislators — swayed by at least 138 cases nationally in which people sentenced to death were later exonerated and by arguments that the death penalty is imposed in a capricious, discriminatory manner and is not a deterrent to crime — voted for repeal. They noted that a repeal in New Mexico in 2009 that also exempted those already on death row had thus far withstood challenges.

After Connecticut's repeal, 33 states will have capital punishment, along with the United States government when it prosecutes cases in the federal courts. Voters in California will be asked in November whether to abolish the death penalty in that state.

Capital punishment in Connecticut dates to colonial times. From 1639 to 2005, it performed 126 executions, first by hanging, then by the electric chair, and since 1973, by lethal injection. But since 1976, when the Supreme Court allowed the resumption of executions, there has been just one person executed in the state: Michael Bruce Ross, a serial killer who voluntarily gave up his right to further appeals and was put to death in 2005. The last person involuntarily put to death, in 1960, was Joseph (Mad Dog) Taborsky, who committed a string of robberies and killings.

Of the 1,289 executions since 1976 in the United States, 935 were in seven Southern and border states. Texas alone accounts for 481 executions.

In the Connecticut Senate, where passage seemed most in doubt, the bill was approved 20 to 16 on April 5, with 2 Democrats and all 14 Republicans opposed. Democrats have a majority in both chambers of the General Assembly.

Before that vote, Dr. Petit spoke at a news conference where he called for the Senate not to pass the bill. "We believe in the death penalty because we believe it is really the only true just punishment for certain heinous and depraved murders," he said.

The Petit murders were cited by several opponents of the repeal, most vividly by Representative Al Adinolfi, a Republican from Cheshire, Hamden and Wallingford, who said he witnessed the chaos at the Petits' smoldering house that day. He recounted gruesome details of the crime in arguing against the repeal.

"And we say here that Komisarjevsky and Hayes don't deserve the death penalty? Shame on us," he said. "They do deserve the penalty, and so do many others."

But Democrats in favor of the bill cited support from many families of murder victims and the fact that capital punishment has long been banned by nearly all of the world's democracies. In a review of 34 years of Connecticut death penalty cases, Prof. John Donohue of Stanford Law School concluded that "arbitrariness and discrimination are defining features of the state's capital punishment regime."

The political fight over the bill could persist long after the vote. Republicans are likely to put the issue in play in the fall when all 36 State Senate and 151 State House seats are up for election. A recent Quinnipiac University poll found that 62 percent of Connecticut residents thought abolishing the death penalty was "a bad idea," though polls over time have found respondents split relatively evenly if given the option of life without parole as an alternative to executions.

In the final remarks in the debate late Wednesday, the House majority leader, Brendan Sharkey, a Democrat from Hamden, said the death penalty offered a false promise that did more harm than good.

"I believe that we, as human beings, should not create laws that reciprocate the evil perpetrated against society," Mr. Sharkey said. "Those laws don't protect us."

EXHIBIT 36

Nevada, Illinois among states that can't pay their bills

Bottom Line,

Jan. 18, 2012 at 10:47 AM ET

AP /

Nevada is among the states most stung by the downturn. Between 2006 and 2010, home values plummeted a staggering 44.5 percent.

By Michael B. Sauter, Charles B. Stockdale and Ashley C. Allen, 24/7 Wall St.

Balancing the budget is not just a federal problem, but a state one as well. The Great Recession resulted in some of the worst state revenues and budget shortages of all time. According to a report on state budgets by the Center for Budget Policy Priorities, dozens of states faced shortfalls of hundreds of millions — or even billions — of dollars.

24/7 Wall St. examined the 10 states that had budget shortfalls of 27 percent or more of their general funds for fiscal year 2011 — the states that were short the most money before they balanced their budgets. For the most part, the states with the worst budget gaps also had among the most anemic economies. Because of their budget shortfalls, all of them have been forced to make dramatic cuts to government services.

Every state but Vermont is required by its own law to balance the budget. In order to do so, state governments have to take extreme measures, instituting deep cuts that often hurt a diversity of residents. In the 2011 fiscal year, 29 states made cuts to services benefiting the disabled and elderly, 34 reduced funds for K-12 and early education, and all but six states reduced positions, benefits or wages of government employees.

24/7 Wall St.: The best- and worst-run states in America

The housing crisis was one of the primary causes for many of the largest budget deficits. The housing markets in states such as Nevada, Illinois and Arizona — all of which are on the list — have been hit particularly hard. Home values in Nevada declined the largest amount in the country between 2006 and 2010. Home values in Arizona decreased the fifth-largest amount over that same period. Sick housing markets weaken the economy and lower tax bases, which hurts state revenues and in turn helps create a budget gap.

Overall, weak state economies contributed to lower revenues and rising budget shortfalls. Not surprisingly, states with slower-growing economies tended to have a larger budget gaps. And although the GDP of every state in the nation grew between 2006 and 2010, seven of the 10 states on this list fell within the 15 states with the smallest increases.

While economic slowdowns and housing problems hit most of the states with the worst budget gaps, there were some exceptions. In four of the 10 states, home values actually rose between 2006 and 2010, the worst period of the recession. Similarly, other states with budget shortfalls weathered the recession relatively well and managed to maintain fairly healthy economies. In Washington state, for example, the median income rose 5.8 percent, the 16th-most in the country, while GDP increased 13.4 percent, the 12th most.

These are the states that cannot pay their bills.

24/7 Wall St.: Worst product flops of 2011

1. Nevada

- **2011 budget shortfall as a percentage of general fund:** 54.5
- **2011 budget shortfall:** $1.8 billion
- **2012 projected budget shortfall:** 37.4 percent (the largest)
- **GDP change (2006 - 2010):** +1.2 percent (smallest increase)
- **Median home value change (2006 - 2010):** -44.5 percent (the largest decline)

TOP

No state has suffered during the recession more than Nevada. Between 2006 and 2010, home values plummeted a staggering 44.5 percent, the poverty rate increased 26 percent, median income dropped 3.8 percent and GDP increased only 1.2 percent. Each was the worst in the country for that category. Last year, Nevada's budget gap was $1.8 billion, the equivalent of 54.5 percent of available funds. This was the third year in a row the state has had one of the worst shortfalls in the country, and that trend appears ready to continue through at least 2013. In order to balance its budget last year, Nevada was forced to raise taxes significantly, cut dental and vision services from Medicaid coverage for adults, reduce financial aid funding, and cut state employee salaries.

2. Illinois

- **2011 budget shortfall as a percentage of general fund:** 40.2
- **2011 budget shortfall:** $13.5 billion
- **2012 projected budget shortfall:** 16.0 percent (11th largest)
- **GDP change (2006 - 2010):** +8.2 percent (13th smallest increase)

- **Median home value change (2006 - 2010):** -4.2 percent (11th largest decline)

Illinois has consistently had among the largest budget shortfalls in the country since 2009. It also was hit extremely hard by the recession. Between 2006 and 2010, home values decreased by 4.2 percent. GDP grew a relatively small 8.2 percent. Median household income increased less than 2 percent. The state made cuts in its budget for community mental health services for both children and adults, and it cut its school education funding by 4 percent, or $311 million. Governor Pat Quinn has announced also that he will lay off thousands of state employees.

24/7 Wall St.: The 10 most expensive weapons in the world

3. Arizona

- **2011 budget shortfall as a percentage of general fund:** 39.0
- **2011 budget shortfall:** $3.3 billion
- **2012 projected budget shortfall:** 17.0 percent (10th largest)
- **GDP change (2006 - 2010):** +2.7 percent (4th smallest increase)
- **Median home value change (2006 - 2010):** -28.6 percent (4th largest decline)

Like its neighbor Nevada, Arizona was hit particularly hard by the subprime mortgage crisis. Between 2006 and 2010, median home values plunged 28.6 percent in the state, the fourth worst price drop in the country. GDP, poverty and income levels have either stagnated or become significantly worse during this period. Since 2009, the state has had among the worst budget gaps in the country, a combined total of $12.1 billion for the three years. To balance its budget, Arizona has made dramatic budget cuts, including revoking Medicaid eligibility of more than 1 million low-income residents and cutting preschool for more than 4,000 children.

Click here for more states that cannot pay their bills

US Business Bottom Line

EXHIBIT 37

WNC chief resigns over Nevada budget cuts

Carol Lucey: Legislature too painful to repeat

2:00 AM Jul 10, 2013

A A

Written by
Ray Hagar
rhagar@rgj.com

FILED UNDER

Local News
Education

Carol Lucey, after suffering through budget cuts in the past three sessions of the Legislature, said Tuesday that she will resign as president of Western Nevada College in Carson City.

The announcement comes about a month after the end of the 2013 Legislature, which slashed the WNC budget by 11 percent over the next two years.

For Western Nevada, that means a $1.7 million cut in 2014 and $2.1 million in 2015, according to the appropriations bill from the 2013 Legislature. ...

Most Popular | Most Commented | More Headlines

1 49ers fan dies after fall at Candlestick Park

2 Sinatra's old Cal Neva resort at Lake Tahoe to get major makeover

3 Largest Ferris wheel nears completion in Las Vegas

4 Siobhan McAndrew: Not the kindergarten you likely remember

5 Nevada 11th in the country for singles

Most Viewed

EXHIBIT 38

Southern Nevada mental...

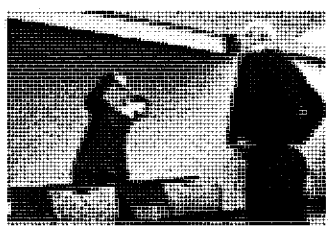
For Las Vegas man, struggle...

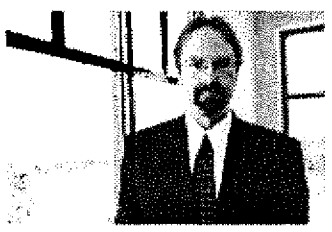
Posted April 14, 2013 - 12:20am Updated April 14, 2013 - 2:02am

'Broken' mental health system overwhelms Nevada

JOHN LOCHER/LAS VEGAS REVIEW-JOURNAL

Many mental health patients are frequently in and out of hospitals and jail.





Related Stories

- For Las Vegas man, struggle against mental illness 'not all misery'
- Brooks' troubles put mental health in spotlight
- Arrest often is first stop for violent, suicidal, mentally ill
- Kindness from Catholic Charities helps those on the street

LEGISLATIVE ACTION

Several bills dealing with the mentally ill are now under consideration by the Nevada Legislature:

By **LAURA MYERS**
LAS VEGAS REVIEW-JOURNAL

The man's story was terrifying. He had been tortured at the High Desert Prison in Indian Springs outside Las Vegas. He had been starved, beaten. A snake had been implanted in his stomach to slowly poison him to death.

"I can feel the venom pumping through me every time it bites me," he said.

Jon Norheim, a Clark County judicial hearing master, listened to this man's accusations during a recent court session to determine whether to involuntarily commit him to a psychiatric hospital.

Norheim told the man his snake problem might go away if he took his medication for schizophrenia.

"I'd take the pills," Norheim advised.

RJ FEATURES

Delivering a New Downtown: How two generations of Downtown leaders are reshaping the heart of the city

Deadly Force Database: When Las Vegas Police shoot, and kill

NFL Team Bar Directory: Feel the "watch-a-game-back-home" vibe

Most Viewed Popular Comments

New headquarters for Zappos reflects company's growth...

Zappos HQ: Business brings money and presence to revitalize...

Coroner IDs man, woman in Las Vegas murder-suicide

Two men stabbed on Strip; one in critical condition

Sunday morning car rollover leaves one dead, two injured

Fading glory: Demand for Elvis impersonators isn't...

■ AB287: Authorizes the involuntary court-ordered admission of people with mental illness to community or outpatient services. The bill is aimed at ensuring the mentally ill stay on medication and in treatment programs.
■ SB221: Gives the state only five days to send records to the National Instant Criminal Background Check System of mentally ill people involuntarily committed to a psychiatric hospital to prevent them from buying guns. Requires psychiatrists to inform law enforcement and potential victims when a patient threatens somebody and has the means to carry out the threat. Also, extends required gun background checks to private purchases and transfer of firearms.
■ SB277: Prohibits a mentally ill person who is subject of a legal petition for involuntary commitment to a psychiatric hospital from buying a gun. Requires the information to be reported to the National Instant Criminal Background Check System. Allows people to later apply to have their gun rights restored.

PSYCHIATRIC HOSPITAL BEDS

Nevada has about 1,170 psychiatric hospital beds, according to the Nevada State Health Division.
The state runs three adult psychiatric hospitals:
■ Rawson-Neal in Las Vegas. Licensed for 289 beds, but budgeted for 190 beds, including 160 for inpatient care and 30 as part of its psychiatric observation unit.
■ Dini-Townsend in Sparks. Licensed for 70 beds but budgeted for 50, including 40 for inpatient care and 10 for an observation unit.
■ Lakes Crossing in Sparks. Licensed and budgeted for 66 inpatient beds. The maximum security facility evaluates mentally ill inmates to determine if they are competent to stand trial and treats them to restore competency.
■ Southern Nevada Adult Mental Health Services also operates seven outpatient clinics, including two in Las Vegas and one each in Henderson, Laughlin, Mesquite, Pahrump and Caliente.

BUDGET CUTS

Since the recession hit in 2007, the budget and staffing for the Nevada Division of Mental Health and Developmental

"I'd rather have it surgically removed," the man said, refusing to take his meds.

The Hispanic man in his mid-20s glared at Norheim from across the room. He balled up his fists, muscles tensed against his shid. Two doctors sitting near him stood and moved away. Two beefy orderlies drew closer.

"Your staff is draining me," the man said. "They actually murdered me, but after 15 hours I resuscitated myself."

The room went silent, the accusation hanging in the air.

"So am I being released?" the man asked after a pause.

"No," Norheim answered. "We've got to fix the problem."

"OK. Have it your way," the man said then abruptly stood up to leave.

His was the last case on the docket of about two dozen patients who came before Norheim that Friday in a makeshift courtroom at the Rawson-Neal Psychiatric Hospital, a state-run acute care facility.

The disturbed man lingered in the cafeteria next to the room where Norheim held court. The agitated patient was left alone, with no attendants to escort him to his room. A guard who accompanies Norheim told the judge, court staffers and doctors in the room to hang tight.

The man wandered outside and walked across a grassy courtyard toward the reception area and main hospital entrance, his way barred by a locked door. A half-dozen hospital staffers surrounded him, moving slowly and speaking calmly.

"I'm legally dead!" the man shouted, then tried to rush the door.

Staffers took him down, pinning his arms and legs, and then securing him in a chair with restraints.

Undaunted by the drama, Norheim said he understood the man's panic.

"To him, the snake inside him is real," Norheim said. "Sometimes, they talk to people we can't see. Las Vegas is a mecca for the mentally ill."

MORE WORK ON THE WAY?

Norheim holds court twice a week at Rawson-Neal, hearing as many as 50 cases each visit. His job is to judge, with the help of psychiatrists and psychologists, whether severely mentally ill men and women are such a danger to themselves or others that they must be held against their will.

Involuntary commitments are rare in Nevada — only 170 cases in 2012 — because most patients quickly stabilize on medication or a psychic break caused by heavy drug or alcohol abuse resolves itself when the person sobers up, he said.

But Norheim's caseload could increase under a proposal before the Nevada Legislature that would allow courts to retain control of mentally ill people without institutionalizing them. AB287 would allow police to forcibly take mentally ill outpatients to medication and counseling appointments under court order.

While the workload for judges would increase, Nevada health authorities hope the new legal tool, if passed, will ease the burden on crowded hospital emergency rooms and on Rawson-Neal, which has become a revolving door for thousands of mentally ill people each year.

The program would target several hundred patients who have "a history of noncompliance with treatment for mental illness" and are frequently in and out of hospitals and jail, according to the legislation. A plan of treatment would be developed and a mental health professional assigned to coordinate each case for six months. If a patient succeeds in treatment, the court order could be dissolved. It also could be renewed.

"The vast majority of these people are repeat people," Norheim said. "People we've seen again and again and again. They go off their meds or their meds aren't working and they're back here."

Norheim, who has heard commitment cases for 17 years for Clark County District Court, said he has seen some people dozens of times, and some predate his time on the job. He blames a lack of funding, housing, case managers, treatment facilities and intense supervision programs for the repeats.

"The most frustrating thing is we can't do enough for these people," Norheim said, noting many are homeless and lack a support system. "Families eventually just walk away."

FEW OPTIONS

Erin Kinard, director of the WestCare Community Triage Center, said her nonprofit organization on April 1 launched a program called Safe Haven for intensive case management of 25 mentally ill people. She said group homes and treatment facilities come and go. Finding care is a challenge.

Services has been cut by a total $80 million in general fund spending. Nevada health officials say much of the savings came from being more efficient with pharmaceutical purchases and not from cutting programs. Officials said a 19 percent reduction in staffing was achieved mostly by not filling vacant positions.

- 2007-09: The approved budget was $721.2 million, including $498.3 million from the state general fund.
- 2009-11: The approved budget was $705.4 million, including $465.7 million from the state general fund. Staffing fell from 1,918.6 positions to 1,724.74 positions.
- 2011-13: The approved budget was $631.2 million, including $418.3 million from the state general fund. Staffing was cut to 1,554.5 positions.

HIGH SUICIDE RATE

Nevada has the fifth-highest suicide rate in the nation with about 19 deaths per 100,000 residents, according to the latest statistics from the Centers for Disease Control and Prevention. The national average is about 12 per 100,000. Nevadans also have a higher rate of mental illness than the national average, according to a 2011 CDC report. Additional indicators of mental health include:

- The average number of mentally unhealthy days in a month among Nevada adults is 4, compared to 3.5 nationally.
- 15.5 percent of Nevada adults have received a diagnosis of depression during their lifetime.
- 11.6 percent of Nevada adults have received a diagnosis of anxiety during their lifetime.
- 4 percent of Nevada adults experience serious psychological stress at any one time.

"There's always a need and waiting lists," Kinard said, adding that most of the patients have drug or alcohol problems they're dealing with as well. "There aren't enough resources."

Dr. Dale Carrison, the chief of staff and head of emergency medicine at University Medical Center, is more blunt.

"The mental health system has been broken since I got to Las Vegas 22 years ago," Carrison said. "There aren't a lot of options for people. Every time they cut the budget they cut the mental health budget first. We do a very poor job of evaluating them and treating them. At some point, you've got to say the state just doesn't care."

UMC's crowded emergency room is grand central for the Las Vegas Valley's mentally ill. Often it's the first stop for police, who take them to the ER for a medical check before determining whether they need to be committed because of their actions or are unable to care for themselves.

The process involves submitting a "Legal 2000" request to put a person in custody for 72 hours for psychiatric observation to determine if the individual is a danger to himself or others. Doctors, psychologists, social workers, nurses, clinical counselors, therapists and police can sign a Legal 2000 order.

On average, about 50 mentally ill people are sitting in emergency rooms in Southern Nevada each day for a medical examination required for a Legal 2000 petition, the Nevada Department of Health and Human Services said.

Most cases are resolved within 72 hours, and the person is released from the hospital because they stabilized and are no longer a danger.

More than 8,000 patients go through Rawson-Neal each year, according to the Nevada State Health Division. The average stay at the acute care facility is about a week but can range from a few days to a few months. It costs an average of about $850 per day per patient, according to 2011 testimony before the Nevada Legislature.

If insurance doesn't cover the cost, state and federal programs for indigents will likely pay the tab.

About two-thirds of the patients are discharged to homes or private residences. Another 18 percent are sent to other residential and institutional settings, including group homes. Some 12 percent go to homeless shelters; 4 percent are sent to other agencies or treatment facilities; and 2 percent discharge to self-care, or a weekly motel.

Nevada's mental health system recently came under fire after a schizophrenic man, James F. Brown, 48, told California homeless advocates that Southern Nevada Adult Mental Health Services in Las Vegas put him on a bus to Sacramento, Calif., dumping him in a city where he didn't know anyone.

Nevada health officials acknowledged that discharge policies and procedures for Rawson-Neal weren't followed in Brown's case, and a state investigation turned up two more unsafe discharges. As a result, authorities instituted new rules that require a second doctor to sign off before discharge and for the head of the hospital to authorize all out-of-state transportation to ensure family, friends or a program is ready to help the patient on arrival.

"We blew it and we're taking corrective action," Mike Willden, director of Nevada Health and Human Services, told a state Senate panel in March during a public hearing examining the state's psychiatric discharge policies.

NEVADA 39TH IN FUNDING

State Sen. Debbie Smith, D-Sparks, said the state has cut $80 million from mental health funding since 2007, when the recession hit. As chairwoman of the Senate Finance Committee, Smith said she hopes to restore some of the money despite a tight budget and competing needs for education and other services.

The 2007 Legislature approved $498.3 million in 2007-09 general fund spending for Mental Health and Developmental Services, according to the department. That compares to $418.3 million approved by the 2011 Legislature for the 2011-13 biennium.

Overall spending, including federal funding, dropped from $721.2 million in 2007-09 to $631.2 million in 2011-13. Nevada health officials said much of the savings came from being more efficient with pharmaceutical purchases, not cutting programs. A 19 percent cut in staffing was achieved by attrition.

Compared to other states, Nevada's mental health spending of $57 per person is low, 39th place among the 50 states and the District of Columbia. The National Alliance on Mental Illness gave Nevada a "D" grade on its most recent report cards, in 2006 and in 2009.

"In a state with high rates of severe depression and other serious mental illnesses — as well as suicides — a strong commitment is needed to restore and expand the mental health safety net," the 2009 report said. "Without one, Nevada will find its emergency rooms and criminal justice system overwhelmed — and costs being shifted to other sectors of state and local government."

COLUMNISTS

SHERMAN FREDERICK
Obama's NSA spying: Eloquence vs. Honesty

MATT YOUMANS
Frustrating outcomes big part of NFL allure

RON KANTOWSKI
Triathlon ultimate test of will, if you can stomach it

DOUG ELFMAN
Faith Hill named 'most influential'

In response to Southern Nevada's greater need, Republican Gov. Brian Sandoval included in his 2014-15 budget request about $800,000 to open a 24-hour urgent care center for the mentally ill at Rawson-Neal. That could ease the burden on ERs. On April 2, the governor added another $4 million in proposed spending to help the mentally ill transition back into the community from jails and prisons.

Willden said now that Nevada is on the road to economic recovery he wants to rebuild the mental health system, starting with the 24-hour urgent care facility and transitional housing

"We all made tough decisions" during the recession, Willden said. "Was I happy to make those kinds of cuts? No. Now that the economy is improving, I think it's important for us to get back on track and to get our priorities right."

Still, there are not enough state beds for the severely mentally ill. Rawson-Neal, which opened in 2006, is budgeted for 190 beds, but another 100 beds from the older hospital remain mothballed.

Willden said the state is looking at reopening some of those older beds in the 1970s-era hospital building in hopes of creating a long-term mental health wing, which doesn't exist now. He also said the state is looking for potential partners to lease space to treat the mentally ill's drug and alcohol problems as well.

"Some of our patients require a longer term stay," Willden said, adding the old building would need work.

That doesn't take care of the staffing problem, however, after years of trimming way back.

Dean Nelson, director of psychology at Rawson-Neal, said he has just nine psychologists, down from 19 in 2007.

"It is bare bones," Nelson said. "There are more services we could be delivering."

He said hospital social workers help patients get into homeless shelters, group homes, assisted living situations, drug and alcohol treatment programs and offer other counseling and help, but there's little follow-up.

"Some of them are just fragile people," Nelson said. "If they don't have that stable environment, it's hard for the rest of their lives to get better."

Dr. Angelene Lawrence, head psychiatrist at Northern Nevada Adult Mental Health Services, said she is quitting in frustration after six years. She said there is a push for state psychiatrists to treat people whose main problems are drug, alcohol and behavioral, but not necessarily serious mental illness.

"I'd say 65 to 85 percent of the problem is drugs," Lawrence said. "A lot of these people kind of create their own illness. And I see it as getting worse. People believe criminal behavior is because of mental illness and therefore they should all come into the psychiatric hospital. They think I have the magical ability to fix them."

GOOD AND BAD CHOICES

Norheim's courtroom is witness to those broken lives.

The court allowed a reporter to watch the proceedings on condition that patients not be named to protect their privacy. The Review-Journal observed sessions on Feb. 20 and Feb. 22.

In one case, an 18-year-old woman who is a diagnosed schizophrenic refused to return home to her mother in Oakland, Calif. Instead, she said she wanted to stay in Las Vegas with a male "friend."

Though social workers report that the woman's mother told them the man is the woman's pimp, the teen denied it. Tears streamed down her face as she wailed uncontrollably.

"I'm emancipated!" she cried. "I don't want to live with her!"

Norheim told her that if the man would come to court he would release her to his care. She said he wouldn't, and broke into tears as orderlies led her away.

Two days later, the teen's male friend did appear. He sat silently, eyes down. She smiled widely. Doctors and social workers said the girl was stable and doing well.

Norheim asked if she would take her medication. She said yes. He asked if he could help her in any other way.

"No thank you," she said. "Just besides the medication."

After she and her friend had gone, Norheim shook his head. He had no reason to commit her. She was an adult who could make her own choices. Even bad ones.

"That makes me sick," Norheim said. "That's her pimp. I wish there was something I could do."

In many cases, patients can't kick their drug habits, contributing to their mental illnesses.

One 48-year-old cocaine addict who heard voices telling her to hurt herself refused immediate placement in a treatment program. Her eyes looked blank, her skin ashy, her teeth decayed.

"When a drug problem is so serious that you end up in a mental institution, for most people that's rock bottom," Norheim told the woman, who wouldn't meet his eyes. "You're going to end up dead."

"I'm going to help myself," the woman finally said, her voice a whisper.

The woman's daughter sat behind her, jaw set. Tearing up, she turned away to avoid looking at her mother.

Norheim released the woman. The daughter followed .

In a few instances, hospitalization served as a wake-up call, and patients were grateful for help.

One man said his life spiraled out of control after his grandmother and 3-year-old son died. He came to court with an IV port in his arm, midway through detox and needing intravenous fluids to avoid the DTs (delirium tremens).

"I was drinking a bottle and a half a day," he told Norheim. "I don't want to touch the bottle again."

Norheim said the man could stay in a private hospital until he finished detox, and then could go home.

"Thank you again for the opportunity," he told Norheim.

Several younger male patients had taken synthetic drugs and had gone temporarily mad, running down streets, getting into fights and causing disturbances. One patient, in his early 20s, kept rubbing the side of his face with his hands, almost as if to make sure he was there. He spoke slowly, the stupor not quite lifted.

"You've got to stay away from that stuff. It'll mess you up," Norheim said.

Some patients appeared ravaged by years of mental illness.

A Rwandan woman, brittle-thin, huddled in a coat draped over pajamas. Eyes wide, she seemed unaware of where she was. Voices had told her "everybody has to die." She stopped taking food to silence the voices. Four weeks later her family had her hospitalized.

"Her sons and husband want her home, but they want the voices to go away," a social worker said.

An interpreter, speaking Swahili, explained what the court session was about. Norheim continued her case to provide more hospital care.

DANGER TO THEMSELVES

Some patients end up at Rawson-Neal because they have nowhere else to go.

One seen by Norheim was an 84-year-old woman, suffering from dementia. She came to the hospital from an assisted living home.

"She wasn't following the rules so they kicked her out," her doctor said.

The woman, her gray hair tangled, looked around in silent confusion, eyes jumping from face to face.

The public defender who represents patients before the court asked that she be held at a private hospital until a guardian is appointed to ensure she gets proper care and is receiving Medicare.

In another case, an elderly woman refused to take her son home, saying a neighbor had threatened to shoot him if he goes onto his property. The man was arrested after beating the neighbor.

In his 40s, the man had long, blond hair and hadn't shaved in days. He wept and told Norheim that he had tried everything from Alcoholics Anonymous to drug rehabilitation, "but they never seem to work."

"I've never been so sober in my life," he said, pledging to try again to give up drugs and alcohol.

The vast majority of cases involved patients who appeared to be more a danger to themselves than anyone else.

One man had tried suicide by banging his head repeatedly against a wall. His forehead appeared split in two.

A woman, shackled for her own protection, needed surgery to repair anal tears from sharp objects she had inserted. She stared straight ahead, unresponsive, eyes dead.

Another woman, listless and with stringy hair, overdosed on pills. She was released to her mother.

"It was a mistake," the woman said of her suicide attempt. "I have two little girls. I have too much to live for."

Some patients appeared deep in dementia.

A squat man with closely cropped hair refused to sit. Hands on hips, he claimed to be an FBI informant in the witness protection program.

"He's highly dangerous," Norheim said after the man left the courtroom.

Norheim committed the most violent patients, including the snake man, a man who was arrested three times for assaulting family members and a man arrested for threatening people with a baseball bat in the street.

One violent patient raised his voice, becoming belligerent when Norheim refused to release him. He said he would refuse medication — a court order would be needed to force him to do so. He would get a private attorney and sue them all, the man added, slamming his hand on the table.

"They done make me crazy, though," he told Norheim, berating the police. "I don't have a mental illness. I'm not going to take it. All you are idiots. I'm going to have to shut down the entire institution."

Norheim said the man had back-to-back fights with police.

"He's lucky to be alive. He told them he will kill them. One of these times, it's not going to go well."

Contact reporter Laura Myers at lmyers @reviewjournal.com or 702-387-2919. Follow @lmyerslvrj on Twitter.

Southern Nevada mental... For Las Vegas man, struggle...

EXHIBIT 39

DeathPenaltyUSA

Juan Ignacio Blanco
crime reporter & criminalist

Executions 1607-1976
by date by name by state other

Executions 1977-Present
by date by name by state other

U.S.A. Executions - 1977-Present

index by State

Alabama	Alaska	Arizona	Arkansas	California	Colorado
Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho
Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana
Maine	Maryland	Massachusetts	Michigan	Minnesota	Mississippi
Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey
New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma
Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee
Texas	Utah	Vermont	Virginia	Washington	Washington, DC
West Virginia	Wisconsin	Wyoming			

NEVADA

#	Name	Date	Method	County
12	Darryll Linnie Mack	April 26, 2006	Lethal Injection	Washoe
11	Terry Jess Dennis	August 12, 2004	Lethal Injection	Washoe
10	Lawrence Colwell Jr.	March 26, 2004	Lethal Injection	Clark
9	Sebastian Stephanus Bridges	April 21, 2001	Lethal Injection	Clark
8	Alvaro Calambro	April 5, 1999	Lethal Injection	Washoe
7	Roderick Abeyta	October 5, 1998	Lethal Injection	Clark
6	Richard Allen Moran	March 30, 1996	Lethal Injection	Clark
5	Thomas E. Baal	June 3, 1990	Lethal Injection	Clark
4	Sean Patrick Flanagan	June 23, 1989	Lethal Injection	Clark
3	William Paul Thompson	June 19, 1989	Lethal Injection	Washoe
2	Carroll Edward Cole	December 6, 1985	Lethal Injection	Clark
1	Jesse Walter Bishop	October 22, 1979	Gas Chamber	Clark

contact

EXHIBIT 40

LAS VEGAS SUN

Clark County teachers rally in campaign for smaller class sizes

By Paul Takahashi (contact)

Wednesday, March 13, 2013 | 8:30 p.m.

35, 38 and 44.

These are the number of students in some Clark County classrooms, according to teachers who rallied Wednesday afternoon against large class sizes.

As lawmakers discussed education changes and funding in Carson City, more than 65 members of the local teachers and culinary unions gathered at the Grant Sawyer Building to call attention to class sizes in Las Vegas, which are among the largest in the nation.

"Class sizes matter," said Clark County Education Association President Ruben Murillo, addressing members of the media over a loudspeaker. "It doesn't take a genius to figure out that the quality of education goes down with an increase in class size. We need the proper funding and resources to educate our kids."

Although Nevada has a class-size reduction program in the first to third grades, cash-strapped school districts were forced to increase class sizes during the recession to balance their budgets.

As a result, Clark County middle and high schools now have average class sizes of 34 and 35 students. Elementary schools have average class sizes of 20 to 21 in the first to third grades, and average class sizes of 33 and 34 in the fourth and fifth grades, according to district officials.

For comparison, the average class size nationally is about 25 students.

"This is shameful," said Hickey Elementary School teacher Shawn Bolin, who has 37 children in his fifth-grade class. "This needs to stop. We need more funding for our schools."

For the most part, the research backs teachers like Bolin, who advocate for smaller class sizes. Many studies show a link between small class sizes and higher student achievement.

Critics, however, aren't so sure. They argue that Nevada has shown little improvement in test scores despite implementing a class-size reduction plan in the early 1990s.

This debate over class sizes reared its head in the Legislature earlier this month when state Superintendent Jim Guthrie argued that an effective teacher trumped the issue of large class sizes. His testimony drew the ire of Democrats, who are pushing for more than $300 million in additional funding to expand class size reduction and early learning programs statewide.

Most teachers argue they can't give adequate attention to individual students when class sizes are too big.

There are 35 kindergartners in Ramona Morgan's class at Manch Elementary School. Because there is no class size cap on kindergarten, class sizes for this grade level often balloon to the high 30s.

"These babies need my attention and I can't get to all of them," Morgan said. "Having 35 kids (in a class) is just too much."

Furthermore, teachers argue classroom management and student discipline becomes more difficult the larger the class gets. Building relationships with students also becomes more of a challenge.

Hyde Park Middle School teacher Rita Morris counts about 40 students in her sixth-grade pre-Algebra classes. With that many students, Morris says it hard to engage all of her students.

"Just getting to know the kids is difficult," she said. "It's almost near impossible."

The teachers union is seeking more state funding to hire more teachers to reduce class sizes, said Executive Director John Vellardita.

State lawmakers have until Friday to act on a petition initiative that would create a 2 percent margins tax on businesses with revenues of $1 million or more. Legislators are also discussing a proposal to revise the state constitution to increase taxes on the mining industry to pay for more education funding.

Without a more stable source of education funding, none of the education policy changes — such as full -day kindergarten and early childhood education — will work, Vellardita said.

"You can't have all-day kindergarten or early childhood ed without addressing class sizes," he said. "That would be a recipe for failure."

Over the past two years, the School District has battled with the teachers union over contracts to raise more funding to reduce class sizes. A recent arbitration win is allowing the district to restore about 700 of the 1,000 teaching positions that were cut last year.

Hiring more teachers using money taken from educator pay raises irked some of the teachers at the rally, who hoisted signs that read: "Stop taking my $ to pay for costs."

Clark County School Board President Carolyn Edwards said she agreed with teachers who want more state funding to lower class sizes. The School District needs more funding from the Legislature, she said, but acknowledged that state money is still tight.

"Their hands are tied just as our hands are tied," Edwards said of lawmakers. "I'm glad the focus is on education. I hope they continue to focus on bringing back what has been cut (during the recession)."

As teachers formed a picket line and marched to chants, Hickey Elementary School teacher Jennifer Wolfe looked on with her 6-year-old daughter Sherri. The kindergartener shares her classroom at the northeast valley school with 34 other children.

"I'm worried about her education," Wolfe said. "It's so hard to get kids to learn when there are 30, 40 kids in a class."

As her mother talked, Sherri smiled and raised a picket sign. It read: "My class size is 35."

"Too much," Sherri said. "Too much."

Most Popular
Viewed
Discussed
Trending
Openings and closings: More mall shopping, fewer dining options
Jerry Tarkanian, now a Hall of Famer, still a fighter
In a stagnant economy, real estate agents turn back to the basics
Velotta: US Airways, American Airlines deal could be done smoothly at McCarran airport
By the numbers: Plenty of figures to marvel at after 2 UNLV losses
Complete Listing »

Connect with Us
Facebook
Twitter
Google+
Tumblr
Email Edition
RSS
Scene in Las Vegas

Budget Cuts Force Reductions in Funding for Ski Team

Due to state budget cuts, the University of Nevada will reduce its funding for scholarships and operational costs for the Wolf Pack skiing team this year and will not fund the program after 2009-10, Director of Athletics Cary Groth announced Tuesday.

RENO, Nev. Due to state budget cuts, the University of Nevada will reduce its funding for scholarships and operational costs for the Wolf Pack skiing team this year and will not fund the program after 2009-10, Director of Athletics Cary Groth announced Tuesday.

Nevada will continue to fund tuition waivers for skiing student-athletes and personnel costs for the coaching staff for the 2009-10 season, but operational costs will be covered by donors or other sources of funding.

"We are all facing challenging economic times, and we have tried to make cuts that will have a minimal impact on the student-athlete experience. We didn't want to cut student-athletes' opportunities in sports, but we have had very tough choices to make and will not be able to fund the program after the 2009-10 season," Groth said.

"I have met with our ski staff and boosters, and we are discussing multiple alternatives of continuing our ski tradition. Possibilities include being funded by donors or becoming a club sport."

The University of Nevada sustained a 15 percent reduction in state funding totaling $33 million for each of the next two years. In addition to the cuts in the funding for skiing, the athletics department has made general reductions in scholarships, reduced all of its sport and operational budgets, trimmed support services like printing and mailing and made personnel cuts such as freezing and eliminating open positions.

PRINTTHIS

Tentative CCSD budget shows a $64 million deficit

By Jessica Janner
CREATED APR. 11, 2012

Las Vegas, NV (KTNV) -- A tentative budget for the 2012-2013 fiscal year was approved by the Clark County School District Board of Trustees Wednesday.

The slightly more than $2 billion budget shows $35 million in federal budget cuts.

The first draft shows also about a $64 million deficit. CCSD says they can reduce the deficit to $3 million if concessions are made by the Clark County Education Association (CCEA), otherwise known as the teachers union.

At this point, CCEA has not been willing to make any concessions and wants the district to honor contracts with teachers, which includes potential raises.

The CCEA claims the district has money to fix the giant deficit and has even offered to help pay half the costs for an independent audit.

However, the school district says they'll likely make cuts in staffing if the teachers union doesn't cooperate.

About 90% of the district's budget goes towards salaries and benefits.

The district says they've cut about $150 million in operating costs from last year.

Superintendent Dwight Jones said in Wednesday's board meeting that this budget is, "Very tentative."

A lot hangs on an arbitration meeting between the district and the teachers union at the end of April.

A final budget proposal will likely be made in mid-May. A final budget is due to the State of Nevada on June 8, 2012.

The new fiscal year begins July 1, 2012.

Find this article at:
http://www.ktnv.com/news/local/147076335.html

Check the box to include the list of links referenced in the article.

EXHIBIT 41

Updated: 11:14 p.m. Friday, Sept. 24, 2010 | Posted: 11:13 p.m. Friday, Sept. 24, 2010

Lawyers for executed man's family ask for hearing in Travis County

Judge asked to review whether man was wrongly convicted of arson murder in deaths of daughters in Corsicana.

Related

By Steven Kreytak

AMERICAN-STATESMAN STAFF

Setting the stage for what could be an extraordinary court inquiry into whether Texas executed an innocent man, lawyers for relatives of Cameron Todd Willingham, put to death for the 1991 arson murder of his three young daughters in Corsicana, on Friday petitioned a judge in Travis County to hold a hearing on whether Willingham was wrongly convicted.

The lawsuit was filed with state District Judge Charlie Baird, who last year issued the state's first posthumous DNA exoneration in a rape case originally tried in Lubbock. Baird is a trial judge who previously had nothing to do with the Lubbock or Willingham cases.

Willingham's execution six years ago has received national attention. Several arson experts in recent years have rejected the science that the investigators who testified at Willingham's trial used to determine that the fire that killed his daughters was intentionally set.

The Texas Forensic Science Commission began reviewing the Willingham case in 2006 but has not reached any conclusions. Williamson County District Attorney John Bradley, the chairman of that commission since last year, said in an interview Friday that Baird does not have the legal authority to consider the Willingham case. "I would say the political end for this one is to abolish the death penalty," Bradley said.

In a later e-mail, Bradley suggested that the Willingham family lawyers improperly filed the case directly with a judge who he said "has no public to hold him accountable" because he isn't running for re-election. Baird is a Democrat whose term on the 299th District Court expires at the end of the year.

Baird agreed last year to hear the Lubbock case, centered on the wrongful conviction of Timothy Cole, who died in prison, under a provision of the Texas Constitution that states, "All courts shall be open, and every person for an injury done him in his \u2026 reputation shall have remedy by due course of law."

The Willingham lawsuit was filed in part under a similar legal claim.

It also asks that Baird open what is called a court of inquiry in the case to determine whether probable cause exists to charge Texas officials with official oppression. The suit claims that those officials, who were not named, committed that crime by failing to consider before Willingham's execution that he was convicted on discredited arson science.

"We are not looking or asking for anything other than a fair and impartial review of the facts and the law in this case," said San Antonio lawyer Gerald Goldstein, who represents Willingham's relatives along with former Texas Gov. Mark White and Barry Scheck, co-founder of the Innocence Project.

Baird said he would hold an evidentiary hearing on the case next month if, after reviewing the filing, he deems the case worthy.

Willingham was convicted of murder in 1992 in the deaths of his children —1-year-old twins Karmon and Kameron and 2-year-old Amber — who died of smoke inhalation after a fire at the family's house in Corsicana, about 55 miles northeast of Waco. He maintained his innocence until his 2004 execution.

Willingham's lawyers said they first presented claims that he was convicted on faulty scientific arson theories to the office of Gov. Rick Perry in the days before his execution.

Since 2006, they have pursued their case with the Forensic Science Commission, whose hired expert last year issued a report identifying numerous scientific shortcomings in the Willingham fire investigation.

At a meeting this month, members of the commission wrestled with the scope of their investigation.

Bradley had supported a draft report that said investigators of the Corsicana fire could not be held accountable for relying on arson indicators now known to be unreliable or misleading because they were following the best available practices of the time.

But some of the commission's scientists said they wanted to look at other issues, including whether the state fire marshal's office, which investigates fires statewide, has a duty to reopen cases once it realizes that earlier investigative practices have been debunked by scientific advancements.

The commission has agreed to convene a panel of fire experts at a November meeting.

The Willingham family's 62-page suit was filed with hundreds of pages of exhibits and indicates that copies have been delivered to Perry's office, the state fire marshal's office, the Navarro County district attorney's office and the office of the state prosecuting attorney, which represents the state in cases at the Court of Criminal Appeals.

It is unclear whether officials in those offices would be made to participate in the inquiry or what a hearing in Baird's court on the Willingham case would entail.

Perry has called Willingham a "monster" and said he believes he is guilty; the fire marshal's office has stood by its original determination that Willingham's house was torched intentionally. A Perry spokeswoman on Friday noted in a statement that Willingham's conviction had been upheld by courts nine times.

Goldstein declined to say whether he planned to seek to subpoena any officials if Baird agrees to hold a hearing.

The February 2009 hearing on the Cole case lasted two days and included testimony from Michele Mallin, the woman whom Cole was convicted of raping, and Jerry Johnson, a prison inmate serving a life term who said he was the one who raped Mallin and was implicated in a later DNA test.

Lawyers for the Innocence Project of Texas questioned the witnesses. No one cross-examined them.

In the Willingham case, Corsicana officials have said they stand by their investigation and conclusions and say they continue to believe he was guilty. Willingham's trial defense lawyer also has said he believes his former client was guilty.

If Baird holds a hearing in October, it would come before the Texas gubernatorial election pitting Perry, a Republican, against Democratic challenger Bill White, a former Houston mayor. Election Day is Nov. 2.

Willingham was executed during Perry's tenure, and Perry was accused of playing politics with the case last year when he replaced three members of the nine-member Commission on Forensic Science, including the chairman, Austin defense lawyer Sam Bassett.

The members, whose terms had expired, were replaced just days before the commission had been scheduled to hear the findings of the expert they had hired to evaluate the case. That presentation was postponed indefinitely.

skreytak@statesman.com; 912-2946

Additional material from staff writer Chuck Lindell.

Police: Bat-wielding man robbed man

Bohls: Nine things and one crazy prediction

Missed tackles: Was this Texas 2013 or Texas 2012?

Austin pizzeria wins round in court battle over name

Gabrielle Nestande assaulted in jail

Proposal to lower Lake Austin faces deep skepticism

[?]

Comments

If you would like to post a comment please Sign in or Register

<!-- /* ----====== Begin Adgeletti Logs ======---- */ Taxonomy ---------- news/local Keywords ---------- * obj_id: 1431412 * obj_type: 292 * topics: [localnews, statesman, mobile, TravisCounty, courts, news, Texas] * type_name: story Ad positions ---------- * HP00 * HP01 * PB00 * PB01 * RP01 * RP02 * RP03 * RP04 * RP05 * RP06 * RP07 * RP08 Position RP05 (wired) displays sizes (300,250), (300,100) for breakpoint 0px-infinity Position RP04 (wired) displays sizes (1,1), (300,100) for breakpoint 0px-infinity Position RP08 (wired) displays sizes (300,100) for breakpoint 0px-infinity Position RP03 (wired) displays sizes (300,250) for breakpoint 0px-infinity Position RP02 (wired) displays sizes (300,100) for breakpoint 0px-infinity Position RP01 (wired) displays sizes (300,600), (300,250), (300,1050) for breakpoint 0px-infinity Position HP01 (wired) displays sizes (728,90) for breakpoint 0px-infinity Position PB01 (wired) displays sizes (950,30) for breakpoint 0px-infinityPosition RP07 (wired) displays sizes (1,1) for breakpoint 0px-infinity Position RP06 (wired) displays sizes (1,1) for breakpoint 0px-infinity Position HP00 (wired) displays sizes (1

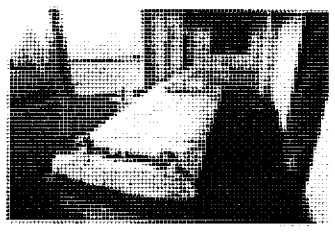
EXHIBIT 42

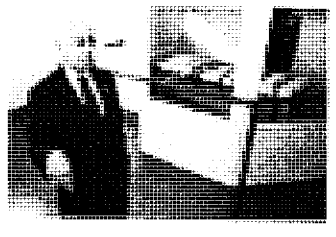
Posted May 22, 2013 - 10:07am Updated May 23, 2013 - 12:41am

Panel rejects construction of a new Nevada execution chamber

JOHN LOCHER/LAS VEGAS REVIEW-JOURNAL

The execution chamber at the now-closed Nevada State Prison in Carson City is shown here in 2005. Lawmakers have decided to not fund construction of a new execution chamber at Ely State Prison.





By SEAN WHALEY
LAS VEGAS REVIEW-JOURNAL CAPITAL BUREAU

CARSON CITY — A panel of lawmakers decided Wednesday not to fund construction of a new $700,000 execution chamber at Ely State Prison.

The decision was made by a joint Assembly Ways and Means and Senate Finance subcommittee when it voted to approve a $104 million capital improvement program for the upcoming two-year budget that begins July 1.

The vote was unanimous, and lawmakers did not comment.

In reviewing the project in past meetings, several lawmakers questioned the need for the new execution chamber. They asked why the current facility at the now shuttered Nevada State Prison in the capital could not be used instead if an execution is scheduled in the next two years.

Corrections Department Director Greg Cox said the current chamber, an old gas chamber that has been used for lethal injections, is not compliant with the Americans With Disabilities Act.

Cox said in previous testimony that he would expect litigation to be filed challenging the use of the chamber if an execution was to go forward.

There is no elevator access, so a disabled inmate facing execution would have to be carried to the "last night" cell across from the chamber.

The viewing area is cramped and provides little room for official witnesses, media representatives, a religious leader, the victims' family members, attorneys and others who choose to or are required to attend executions.

Cox said any new execution chamber probably would face litigation too but not to the degree the existing facility would see from the federal public defender's office.

But he acknowledged the old chamber could be used if necessary.

Nevada's 83-inmate death-row population is housed at Ely, 302 miles east of the capital.

Cox said the project is needed to follow state law.

Ely is an appropriate location because that is where the death row population is housed.

The last execution, by lethal injection, occurred at the Nevada State Prison on April 26, 2006, when Daryl Mack was put to death.

Mack was executed for the rape and murder of a Reno woman, Betty Jane May, in 1988.

Contact Capital Bureau reporter Sean Whaley at swhaley@reviewjournal.com or 775-687-3900.

Sandoval signs transgender...

No GOP legislators take up...

EXHIBIT 43

121 Nev. 142
Supreme Court of Nevada.

John LANGON, Appellant,
v.
Julia MATAMOROS, an Individual, Respondent.

No. 42153. | May 26, 2005.

Synopsis

Background: Motorist brought personal-injury action arising from automobile accident. Following a jury trial, the Second Judicial District Court, Washoe County, James W. Hardesty, J., entered judgment in favor of alleged tortfeasor and denied motorist's motion for new trial. Motorist appealed.

[Holding:] The Supreme Court, Maupin, J., held that statute mandating that conviction of a crime resulting in injury to the victim is conclusive evidence of civil liability for the injury does not apply to misdemeanor traffic offenses.

Affirmed.

West Headnotes (7)

[1] **Appeal and Error**
Cases Triable in Appellate Court

Construction of a statute is a question of law, which Supreme Court reviews de novo.

[2] **Appeal and Error**
Refusal of new trial

Supreme Court reviews an order denying a motion for a new trial for abuse of discretion.

1 Cases that cite this headnote

[3] **Appeal and Error**
On motion for judgment notwithstanding verdict

Order denying judgment notwithstanding the verdict (JNOV) is not appealable.

[4] **Judgment**
Civil or criminal proceedings

Statute mandating that conviction of a crime resulting in injury to the victim is conclusive evidence of civil liability for the injury does not apply to misdemeanor traffic offenses. West's NRSA 41.133.

5 Cases that cite this headnote

[5] **Statutes**
Plain language; plain, ordinary, common, or literal meaning

Supreme Court ascribes the plain meaning to a statute that is not ambiguous.

[6] **Statutes**
Language and intent, will, purpose, or policy

When the statutory language fails to address an issue impliedly affected by the statute, legislative intent controls.

[7] **Statutes**
Intent

Statutes
Policy considerations; public policy

Supreme Court looks to reason and public policy to discern legislative intent.

Attorneys and Law Firms

**1077 E. Sue Saunders, Reno, for Appellant.

Turner & Riddle and Karl H. Smith, Reno, for Respondent.

Before MAUPIN, DOUGLAS and PARRAGUIRRE, JJ.

Opinion

143** ***OPINION

MAUPIN, J.

In this appeal, we consider whether NRS 41.133, which mandates that conviction of a crime resulting in injury to the victim is conclusive evidence of civil liability for the injury, applies to misdemeanor traffic violations.

FACTS AND PROCEDURAL HISTORY

Appellant John Langon and respondent Julia Matamoros were involved in an automobile accident, as a result of which police issued Matamoros a citation for failure to yield the right of way. Matamoros ultimately pleaded no contest, forfeited bail and paid a fine in connection with the citation.

Langon sued Matamoros for personal injuries under a negligence theory of recovery and proceeded to trial. The jury returned a verdict in favor of Matamoros, and the district court entered judgment accordingly. The district court then denied Langon's motion for judgment notwithstanding the verdict and in the alternative for a new trial. Langon appeals from the judgment and order denying his post-trial motions.

DISCUSSION

[1] **[2]** **[3]** The construction of a statute is a question of law, which we review de novo.[1] ****1078** We review an order denying a motion for a new trial for abuse of discretion.[2]

NRS 41.133 civil liability

[4] Langon argues that, under NRS 41.133, Matamoros' conviction pursuant to a no contest plea and forfeiture of bail for failure to yield is admissible as conclusive evidence that she is liable for his injuries. Accordingly, Langon argues that the district court erred in denying his post-trial motions. Matamoros asserts that her plea of no contest did not result in a judgment of conviction of a ***144** "crime" for the purposes of NRS 41.133. We agree with Matamoros and hold that NRS 41.133 does not apply to misdemeanor traffic offenses.[3]

[5] **[6]** **[7]** We ascribe the plain meaning to a statute that is not ambiguous.[4] When " 'the statutory language ... fails to address [an] issue [impliedly affected by the statute],' " legislative intent controls.[5] "We look to reason and public policy to discern legislative intent."[6] Because the scope of NRS 41.133 is inherently unclear, particularly in relation with other statutory measures governing tort liability, and because a literal reading of the measure would result in consequences unintended by the Legislature, we must undertake an examination of the Legislature's intent with regard to its enactment.

NRS 41.133 states: "If an offender has been convicted of the crime which resulted in the injury to the victim, the judgment of conviction is conclusive evidence of all facts necessary to impose civil liability for the injury."

The Legislature enacted NRS 41.133 from a group of victims' rights bills, which included a companion measure that prohibited a convicted offender from suing victims for injuries sustained during the commission of sexual assault, kidnapping, arson, robbery, burglary, sexual molestation and criminal homicide.[7] The bill was approved and signed by the Governor, and the companion provision became NRS 41.135.[8] The separation of the companion provision as NRS 41.135, from the text of the bill that eventually became NRS 41.133, resulted from an administrative act of revision not performed by the Legislature. The crimes of violence originally enumerated in the bill draft that became NRS 41.135 reflected ***145** malum in se offenses that legislators clearly intended NRS 41.133 to include; nothing in the legislative history indicates that legislators contemplated that malum in prohibitum offenses such as traffic violations would be considered crimes for the purposes of the overall measure.[9] We therefore conclude that NRS 41.133 does not apply to misdemeanor violations of state and local traffic codes.

Moreover, the application of NRS 41.133 to misdemeanor traffic violations would directly ****1079** conflict with NRS 41.141, Nevada's comparative negligence statute, thus thwarting a more specific legislative purpose.[10] First, NRS 41.141 insulates a defendant from liability in cases in which a plaintiff's comparative negligence exceeds that "of the parties to the action against whom recovery is sought."[11] Second, NRS 41.141 reduces the extent of the defendant's liability when the comparative negligence of the plaintiff is found

to be less than 51 percent of the total causal negligence. If NRS 41.133 were applied as Langon suggests, discretionary police decisions to issue traffic citations, regardless of potential evidence of comparative negligence, would serve to conclusively override the basic statutory construct governing the law of negligence. Such an approach would render the comparative negligence scheme of NRS 41.141 meaningless in this context.

Remaining assignments of error

Langon asserts that the district court erred in rejecting his proposed jury instruction on negligence per se. He further contends that the district court abused its discretion in refusing to allow the police officer who responded to the scene to testify as an expert, admitting a letter by Langon's treating chiropractor, and admitting Langon's employment records. We have considered these arguments and conclude that they lack merit.

CONCLUSION

Because NRS 41.133 does not apply to misdemeanor traffic offenses, convictions entered upon traffic citations may not be used to conclusively establish civil liability. We therefore affirm the judgment below and the order denying post-trial motions.

DOUGLAS and PARRAGUIRRE JJ., concur.

Parallel Citations

111 P.3d 1077

Footnotes

1 *White v. Continental Ins. Co.*, 119 Nev. 114, 116, 65 P.3d 1090, 1091 (2003).

2 *Krause Inc. v. Little*, 117 Nev. 929, 933, 34 P.3d 566, 569 (2001). The order denying judgment notwithstanding the verdict is not appealable. *Id.*

3 In *Mendez v. Brinkerhoff*, 105 Nev. 157, 771 P.2d 163 (1989), this court held that forfeiture of bail in connection with a traffic citation was not admissible in a civil proceeding as an admission that the cited party committed the charged traffic offense. Although *Mendez* was decided after the enactment of NRS 41.133, we did not determine whether the statute applied because, at least ostensibly, the events in question pre-dated the statute's effective date.

4 *Crestline Inv. Group v. Lewis*, 119 Nev. 365, 368, 75 P.3d 363, 365 (2003).

5 *Id.* (quoting *A.F. Constr. Co. v. Virgin River Casino*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002)).

6 *State v. Catanio*, 120 Nev.1030, ——, 102 P.3d 588, 590 (2004).

7 *See* A.B. 268, 63d Leg. (Nev.1985).

8 The Legislature amended NRS 41.135 in 1997 to state that a person who is convicted of committing or attempting to commit a felony, an act that would have been a felony if committed by an adult, or a misdemeanor or gross misdemeanor that constitutes domestic violence, may not bring an action against the victim for injuries or property damage the offender suffered. 1997 Nev. Stat., ch. 476, § 17, at 1811.

9 *See, e.g., State, Div. of Insurance v. State Farm*, 116 Nev. 290, 293–94, 995 P.2d 482, 485 (2000) (noting that when a statute is ambiguous, the court should examine legislative history and intent); *Nunez v. Sahara Nevada Corp.*, 677 F.Supp. 1471, 1473 (D.Nev.1988) (considering a statute's meaning in the context of a larger statutory scheme).

10 *See SIIS v. Surman*, 103 Nev. 366, 367–68, 741 P.2d 1357, 1359 (1987).

11 *See also Buck v. Greyhound Lines*, 105 Nev. 756, 783 P.2d 437 (1989).

EXHIBIT 44

98 S.Ct. 2954
Supreme Court of the United States

Sandra LOCKETT, Petitioner,
v.
State of OHIO.

No. 76-6997. | Argued Jan. 17, 1978. | Decided July 3, 1978.

Defendant was convicted in the trial court of aggravated murder and of aggravated robbery and was sentenced to death. The Ohio Court of Appeals, Summit County, affirmed, and defendant appealed. The Ohio Supreme Court, 49 Ohio St.2d 48, 358 N.E.2d 1062, affirmed, and certiorari was granted. The Supreme Court, Mr. Chief Justice Burger, held that: (1) prosecutor's references in closing remarks to State's evidence as "unrefuted" and "uncontradicted" did not violate defendant's Fifth and Fourteenth Amendment rights; (2) exclusion of prospective jurors who indicated they could not be trusted to abide by existing law due to their convictions concerning the death penalty was proper; (3) defendant was given adequate notice of meaning of statute under which she was convicted, and (4) Ohio death penalty statute did not permit type of individualized consideration of mitigating factors required by Eighth and Fourteenth Amendments in capital cases.

Judgment reversed to the extent that it sustained imposition of death penalty and case remanded.

Mr. Justice Blackmun filed an opinion concurring in part and concurring in the judgment.

Mr. Justice Marshall filed an opinion concurring in the judgment.

Mr. Justice Rehnquist filed an opinion concurring in part and dissenting in part.

For separate opinion of Mr. Justice White concurring in part and dissenting in part, see 98 S.Ct. 2981.

West Headnotes (6)

[1] **Constitutional Law**
Prosecutor

Criminal Law
Reference to Evidence as Uncontradicted as Comment on Failure to Testify

Where defendant's counsel clearly focused jury's attention on defendant's silence first by outlining her contemplated defense in his opening statement and by then stating to court and jury near close of case that defendant would be the "next witness," even though defendant did not testify, prosecutor's references in closing remarks to State's evidence as "unrefuted" and "uncontradicted" did not constitute comment on defendant's failure to testify and did not violate defendant's Fifth and Fourteenth Amendment rights. U.S.C.A.Const. Amends. 5, 14.

233 Cases that cite this headnote

[2] **Jury**
Punishment Prescribed for Offense

Where each of four excluded veniremen made it unmistakably clear that they could not be trusted to abide by existing law and to follow conscientiously instructions of trial judge due to their opposition to capital punishment, they were properly excluded from jury. U.S.C.A.Const. Amends. 6, 14.

287 Cases that cite this headnote

[3] **Criminal Law**
Principals, Aiders, Abettors, and Accomplices in General

Where Ohio Supreme Court's construction of complicity provision of statute under which defendant was convicted was consistent with both prior Ohio law and with legislative history of statute, interpretation of provision did not deprive defendant of fair warning of crime with which she was charged. R.C.Ohio § 2923.03(A).

49 Cases that cite this headnote

[4] **Homicide**
Aiding, Abetting, or Other Participation in Offense
Homicide
Constitutional and Statutory Provisions
Homicide
Aiding, Abetting, or Other Participation in Offense

Constitution does not prohibit states from enacting felony-murder statutes or from making aiders and abettors equally responsible, as a matter of law, with principals. (Per Mr. Chief Justice Burger with three Justices concurring and three Justices concurring in the judgment.)

36 Cases that cite this headnote

[5] **Constitutional Law**
Proceedings
Sentencing and Punishment
Factors Related to Offense
Sentencing and Punishment
Offender's Character in General

Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering as a mitigating factor any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death. (Per Mr. Chief Justice Burger with three Justices concurring and three Justices concurring in the judgment.) U.S.C.A.Const. Amends. 8, 14.

1027 Cases that cite this headnote

[6] **Constitutional Law**
Proceedings
Sentencing and Punishment
Provision Authorizing Death Penalty
Sentencing and Punishment
Aggravating or Mitigating Circumstances

Where Ohio death penalty statute required trial judge, once verdict of aggravated murder with specifications was returned, to impose death sentence unless one or more specified mitigating factors was present, but where statute did not permit sentencing judge to consider, as mitigating factors, defendant's lack of specific intent to cause death and defendant's role as accomplice, statute violated Eighth and Fourteenth Amendments. (Per Mr. Chief Justice Burger with three Justices concurring and three Justices concurring in the judgment.) U.S.C.A.Const. Amends. 8, 14; R.C.Ohio §§ 2929.03, 2929.04, 2929.04(B).

1240 Cases that cite this headnote

****2955 *586 *Syllabus****

The Ohio death penalty statute provides that once a defendant is found guilty of aggravated murder with at least one of seven specified aggravating circumstances, the death penalty must be imposed unless considering "the nature and circumstances of the offense and the history, character, and condition of the offender," the sentencing judge determines that at least one of the following circumstances is established by a preponderance of the evidence: (1) the victim induced or facilitated the offense; (2) it is unlikely that the offense would have been committed but for the fact that the offender was under duress, coercion, or strong provocation; or (3) the offense was primarily the product of the offender's psychosis or mental deficiency. Petitioner, whose conviction of aggravated murder with specifications that it was committed to escape apprehension for, and while committing or attempting to commit, aggravated robbery, and whose sentence to death were affirmed by the Ohio Supreme Court, makes various challenges to the validity of her conviction, and attacks the constitutionality of the death penalty statute on the ground, *inter alia*, that it does not give the sentencing judge a full opportunity to consider mitigating circumstances in capital cases as required by the Eighth and Fourteenth Amendments. *Held* : The judgment is reversed insofar as it upheld the death penalty and the case is remanded. Pp. 2959-2967; 2969-2972; 2972-2973; 2983-2985.

49 Ohio St.2d 48, 358 N.E.2d 1062, reversed in part and remanded.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Parts I and II, concluding:

1. The prosecutor's closing references to the State's evidence as "unrefuted" and "uncontradicted" (no

evidence having been introduced to rebut the prosecutor's case after petitioner decided not to testify) did not violate the constitutional prohibitions against commenting on an accused's failure to testify, where petitioner's counsel had already focused the jury's attention on her silence by promising a defense and telling the jury that she would testify. Pp. 2959-2960.

2. The exclusion from the venire of four prospective jurors who made it "unmistakably clear" that because of their opposition to the death penalty, they could not be trusted to "abide by existing law" and to ***587** "follow conscientiously" the trial judge's instructions, *Boulden v. Holman*, 394 U.S. 478, 484, 89 S.Ct. 1138, 1142, 22 L.Ed.2d 433, did not violate petitioner's Sixth and Fourteenth Amendment rights under the principles of *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776, or *Taylor v. Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690. Pp. 2959-2961.

3. Petitioner's contention that the Ohio Supreme Court's interpretation of the complicity provision of the statute under which she was convicted was so unexpected that it deprived her of fair warning of the crime with which she was charged, is without merit. The court's construction was consistent with both prior Ohio law and the statute's legislative history. P. 2961.

THE CHIEF JUSTICE, joined by Mr. Justice STEWART, Mr. Justice POWELL, ****2956** and Mr. Justice STEVENS, concluded, in Part III, that the limited range of mitigating circumstances that may be considered by the sentencer under the Ohio death penalty statute is incompatible with the Eighth and Fourteenth Amendments. Pp. 2961-2967.

(a) The Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering *as a mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death. Pp. 2964-2965.

(b) The need for treating each defendant in a capital case with the degree of respect due the uniqueness of the individual is far more important than in noncapital cases, particularly in view of the unavailability with respect to an executed capital sentence of such postconviction mechanisms in noncapital cases as probation, parole, and work furloughs. P. 2965.

(c) A statute that prevents the sentencer in capital cases from giving independent mitigating weight to aspects of the defendant's character and record and to the circumstances of the offense proffered in mitigation creates the risk that the death penalty will be imposed in spite of factors that may call for a less severe penalty, and when the choice is between life and death, such risk is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments. P. 2965.

(d) The Ohio death penalty statute does not permit the type of individualized consideration of mitigating factors required by the Eighth and Fourteenth Amendments. Only the three factors specified in the statute can be considered in mitigation of the defendant's sentence, and once it is determined that none of those factors is present, the statute mandates the death sentence. Pp. 2965-2967.

Mr. Justice WHITE concluded that petitioner's death sentence should ***588** be vacated on the ground that the Ohio death penalty statute permits a defendant convicted of aggravated murder with specifications to be sentenced to death, as petitioner was in this case, without a finding that he intended death to result. Pp. 2983-2985.

Mr. Justice MARSHALL, being of the view that the death penalty is, under all circumstances, a cruel and unusual punishment prohibited by the Eighth Amendment, concurred in the judgment insofar as it vacates petitioner's death sentence, and also concurred in the judgment insofar as it affirms her conviction. Pp. 2972-2973.

Mr. Justice BLACKMUN concluded that petitioner's death sentence should be vacated on the grounds that (1) the Ohio death penalty statute is deficient in regard to petitioner, a nontriggerman charged with aiding and abetting a murder, in failing to allow consideration of the extent of petitioner's involvement, or the degree of her *mens rea*, in the commission of the homicide, and (2) the procedure provided by an Ohio Rule of Criminal Procedure giving the sentencing court full discretion to bar the death sentence "in the interests of justice" *if* the defendant pleads guilty or no contest, but no such discretion if the defendant goes to trial, creates an unconstitutional disparity of sentencing alternatives. *United States v. Jackson*, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138. Pp. 2969-2972.

Attorneys and Law Firms

Anthony G. Amsterdam, Stanford, Cal., for petitioner.

Carl M. Layman, III, Akron, Ohio, for respondent.

Opinion

*589 Mr. Chief Justice BURGER delivered the opinion of the Court with respect to the constitutionality of petitioner's conviction (Parts I and II), together with an opinion (Part III), in which Mr. Justice STEWART, Mr. Justice POWELL, and Mr. Justice STEVENS joined, on the constitutionality of the statute under which petitioner was sentenced to death, and announced the judgment of the Court.

We granted certiorari in this case to consider, among other questions, whether Ohio violated the Eighth and Fourteenth amendments **2957 by sentencing Sandra Lockett to death pursuant to a statute[1] that narrowly limits the sentencer's discretion to consider the circumstances of the crime and the record and character of the offender as mitigating factors.

I

Lockett was charged with aggravated murder with the aggravating specifications (1) that the murder was "committed for the purpose of escaping detection, apprehension, trial, or punishment" for aggravated robbery, and (2) that the murder was "committed while . . . committing, attempting to commit, or fleeing immediately after committing or attempting to commit . . . aggravated robbery." That offense was punishable by death in Ohio. See Ohio Rev.Code Ann. §§ 2929.03, 2929.04 (1975). She was also charged with aggravated robbery. The State's case against her depended largely upon the testimony of a coparticipant, one Al Parker, who gave the following account of her participation in the robbery and murder.

Lockett became acquainted with Parker and Nathan Earl Dew while she and a friend, Joanne Baxter, were in New Jersey. Parker and Dew then accompanied Lockett, Baxter, and Lockett's brother back to Akron, Ohio, Lockett's *590 home-town. After they arrived in Akron, Parker and Dew needed money for the trip back to New Jersey. Dew suggested that he pawn his ring. Lockett overheard his suggestion, but felt that the ring was too beautiful to pawn, and suggested instead that they could get some money by robbing a grocery store and a furniture store in the area. She warned that the grocery store's operator was a "big guy" who carried a "45" and that they would have "to get him real quick." She also volunteered to get a gun from her father's basement to aid in carrying out the robberies, but by that time, the two stores had closed and it was too late to proceed with the plan to rob them.

Someone, apparently Lockett's brother, suggested a plan for robbing a pawnshop. He and Dew would enter the shop and pretend to pawn a ring. Next Parker, who had some bullets, would enter the shop, ask to see a gun, load it, and use it to rob the shop. No one planned to kill the pawnshop operator in the course of the robbery. Because she knew the owner, Lockett was not to be among those entering the pawnshop, though she did guide the others to the shop that night.

The next day Parker, Dew, Lockett, and her brother gathered at Baxter's apartment. Lockett's brother asked if they were "still going to do it," and everyone, including Lockett, agreed to proceed. The four then drove by the pawnshop several times and parked the car. Lockett's brother and Dew entered the shop. Parker then left the car and told Lockett to start it again in two minutes. The robbery proceeded according to plan until the pawnbroker grabbed the gun when Parker announced the "stickup." The gun went off with Parker's finger on the trigger firing a fatal shot into the pawnbroker.

Parker went back to the car where Lockett waited with the engine running. While driving away from the pawnshop, Parker told Lockett what had happened. She took the gun from the pawnshop and put it into her purse. Lockett and *591 Parker drove to Lockett's aunt's house and called a taxicab. Shortly thereafter, while riding away in a taxicab, they were stopped by the police, but by this time Lockett had placed the gun under the front seat. Lockett told the police that Parker rented a room from her mother and lived with her family. After verifying this story with Lockett's parents, the police released Lockett and Parker. Lockett hid Dew and Parker in the attic when the police arrived at the Lockett household later that evening.

**2958 Parker was subsequently apprehended and charged with aggravated murder with specifications, an offense punishable by death, and aggravated robbery. Prior to trial, he pleaded guilty to the murder charge and agreed to testify against Lockett, her brother, and Dew. In return, the prosecutor dropped the aggravated robbery charge and the specifications to the murder charge, thereby eliminating the possibility that Parker could receive the death penalty.

Lockett's brother and Dew were later convicted of aggravated murder with specifications. Lockett's brother was sentenced to death, but Dew received a lesser penalty because it was determined that his offense was "primarily the product of mental deficiency," one of the three mitigating circumstances specified in the Ohio death penalty statute.

Two weeks before Lockett's separate trial, the prosecutor offered to permit her to plead guilty to voluntary manslaughter and aggravated robbery (offenses which each carried a maximum penalty of 25 years' imprisonment and a maximum fine of $10,000, see Ohio Rev.Code Ann. §§ 2903.03, 2911.01, 2929.11 (1975)) if she would cooperate with the State, but she rejected the offer. Just prior to her trial, the prosecutor offered to permit her to plead guilty to aggravated murder without specifications, an offense carrying a mandatory life penalty, with the understanding that the aggravated robbery charge and an outstanding forgery charge would be dismissed. Again she rejected the offer.

*592 At trial, the opening argument of Lockett's defense counsel summarized what appears to have been Lockett's version of the events leading to the killing. He asserted the evidence would show that, as far as Lockett knew, Dew and her brother had planned to pawn Dew's ring for $100 to obtain money for the trip back to New Jersey. Lockett had not waited in the car while the men went into the pawnshop but had gone to a restaurant for lunch and joined Parker, thinking the ring had been pawned, after she saw him walking back to the car. Lockett's counsel asserted that the evidence would show further that Parker had placed the gun under the seat in the taxicab and that Lockett had voluntarily gone to the police station when she learned that the police were looking for the pawnbroker's killers.

Parker was the State's first witness. His testimony related his version of the robbery and shooting, and he admitted to a prior criminal record of breaking and entering, larceny, and receiving stolen goods, as well as bond jumping. He also acknowledged that his plea to aggravated murder had eliminated the possibility of the death penalty, and that he had agreed to testify against Lockett, her brother, and Dew as part of his plea agreement with the prosecutor. At the end of the major portion of Parker's testimony, the prosecutor renewed his offer to permit Lockett to plead guilty to aggravated murder without specifications and to drop the other charges against her. For the third time Lockett refused the option of pleading guilty to a lesser offense.

Lockett called Dew and her brother as defense witnesses, but they invoked their Fifth Amendment rights and refused to testify. In the course of the defense presentation, Lockett's counsel informed the court, in the presence of the jury, that he believed Lockett was to be the next witness and requested a short recess. After the recess, Lockett's counsel told the judge that Lockett wished to testify but had decided to accept her mother's advice to remain silent, despite her counsel's warning that, if she followed that advice, she would have no *593 defense except the cross-examination of the State's witnesses. Thus, the defense did not introduce any evidence to rebut the prosecutor's case.

The court instructed the jury that, before it could find Lockett guilty, it had to find that she purposely had killed the pawnbroker while committing or attempting to commit aggravated robbery. The jury was further charged that one who
"purposely aids, helps, associates himself or herself with another for the purpose of **2959 committing a crime is regarded as if he or she were the principal offender and is just as guilty as if the person performed every act constituting the offense. . . . "

Regarding the intent requirement, the court instructed:
"A person engaged in a common design with others to rob by force and violence an individual or individuals of their property is presumed to acquiescence in whatever may reasonably be necessary to accomplish the object of their enterprise. . . .

"If the conspired robbery and the manner of its accomplishment would be reasonably likely to produce death, each plotter is equally guilty with the principal offender as an aider and abettor in the homicide . . . . An intent to kill by an aider and abettor may be found to exist beyond a reasonable doubt under such circumstances."

The jury found Lockett guilty as charged.

Once a verdict of aggravated murder with specifications had been returned, the Ohio death penalty statute required the trial judge to impose a death sentence unless, after "considering the nature and circumstances of the offense" and Lockett's "history, character, and condition," he found by a preponderance of the evidence that (1) the victim had induced or facilitated the offense, (2) it was unlikely that Lockett would have committed the offense but for the fact that she "was under duress, coercion, or strong provocation," or (3) the *594 offense was "primarily the product of [Lockett's] psychosis or mental deficiency." Ohio Rev.Code §§ 2929.03-2929.04(B) (1975).
In accord with the Ohio statute, the trial judge requested a presentence report as well as psychiatric and psychological reports. The reports contained detailed information about Lockett's intelligence, character, and background. The psychiatric and psychological reports described her as a 21-year-old with low-average or average intelligence, and not suffering from a mental deficiency. One of the psychologists reported that "her prognosis for rehabilitation" if returned to society was

favorable. The presentence report showed that Lockett had committed no major offenses although she had a record of several minor ones as a juvenile and two minor offenses as an adult. It also showed that she had once used heroin but was receiving treatment at a drug abuse clinic and seemed to be "on the road to success" as far as her drug problem was concerned. It concluded that Lockett suffered no psychosis and was not mentally deficient.[2]

After considering the reports and hearing argument on the penalty issue, the trial judge concluded that the offense had not been primarily the product of psychosis or mental deficiency. Without specifically addressing the other two statutory mitigating factors, the judge said that he had "no alternative, whether [he] like[d] the law or not" but to impose the death penalty. He then sentenced Lockett to death.

II

A

[1] At the outset, we address Lockett's various challenges to the validity of her conviction. Her first contention is that the *595 prosecutor's repeated references in his closing remarks to the State's evidence as "unrefuted" and "uncontradicted" constituted a comment on her failure to testify and violated her Fifth and Fourteenth Amendment rights. See *Griffin v. California,* 380 U.S. 609, 615, 85 S.Ct. 1229, 1233, 14 L.Ed.2d 106 (1965). We conclude, however, that the prosecutor's closing comments in this case did not violate constitutional prohibitions. Lockett's own counsel had clearly focused the jury's attention on her silence, first, by **2960 outlining her contemplated defense in his opening statement and, second, by stating to the court and jury near the close of the case, that Lockett would be the "next witness." When viewed against this background, it seems clear that the prosecutor's closing remarks added nothing to the impression that had already been created by Lockett's refusal to testify after the jury had been promised a defense by her lawyer and told that Lockett would take the stand.

B

[2] Lockett also contends that four prospective jurors were excluded from the venire in violation of her Sixth and Fourteenth Amendment rights under the principles established in *Witherspoon v. Illinois,* 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968), and *Taylor v. Louisiana,* 419 U.S. 522, 528, 95 S.Ct. 692, 696, 42 L.Ed.2d 690 (1975). We do not agree.

On *voir dire,* the prosecutor told the venire that there was a possibility that the death penalty might be imposed, but that the judge would make the final decision as to punishment. He then asked whether any of the prospective jurors were so opposed to capital punishment that "they could not sit, listen to the evidence, listen to the law, [and] make their determination solely upon the evidence and the law without considering the fact that capital punishment" might be imposed. Four of the venire responded affirmatively. The trial judge then addressed the following question to those four veniremen:
"[D]o you feel that you could take an oath to well and truely [*sic*] try this case . . . and follow the law, or is *596 your conviction so strong that you cannot take an oath, knowing that a possibility exists in regard to capital punishment?"

Each of the four specifically stated twice that he or she would not "take the oath." They were excused.

In *Witherspoon,* persons generally opposed to capital punishment had been excluded for cause from the jury that convicted and sentenced the petitioner to death. We did not disturb the conviction but we held that "a sentence of death cannot be carried out if the jury that imposed or recommended it was chosen by excluding veniremen for cause simply because they voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction." 391 U.S., at 522, 88 S.Ct., at 1777. We specifically noted, however, that nothing in our opinion prevented the execution of a death sentence when the veniremen excluded for cause make it "unmistakably clear . . . that their attitude toward the death penalty would prevent them from making an impartial decision as to the defendant's *guilt.*" *Id.,* at 522-523, n. 21, 88 S.Ct., at 1777.

Each of the excluded veniremen in this case made it "unmistakably clear" that they could not be trusted to "abide by existing law" and "to follow conscientiously the instructions" of the trial judge. *Boulden v. Holman,* 394 U.S. 478, 484, 89 S.Ct. 1138, 1142, 22 L.Ed.2d 433 (1969). They were thus properly excluded under *Witherspoon,* even assuming, *arguendo,* that *Witherspoon* provides a basis for attacking the conviction as well as the sentence in a capital case.

Nor was there any violation of the principles of *Taylor v.*

Louisiana, supra. In *Taylor,* the Court invalidated a jury selection system that operated to exclude a "grossly disproportionate," 419 U.S., at 525, 95 S.Ct., at 695, number of women from jury service thereby depriving the petitioner of a jury chosen from a "fair cross-section" of the community, *id.,* at 530, 95 S.Ct., at 697. Nothing in *Taylor,* however, suggests that the right to a representative jury includes the right to be tried by jurors who have explicitly ***597** indicated an inability to follow the law and instructions of the trial judge.

C

[3] Lockett's final attack on her conviction, as distinguished from her sentence, merits only brief attention. Specifically she contends that the Ohio Supreme Court's interpretation of the complicity provision of ****2961** the statute under which she was convicted, Ohio Rev.Code Ann. § 2923.03(A) (1975), was so unexpected that it deprived her of fair warning of the crime with which she was charged. The opinion of the Ohio Supreme Court belies this claim. It shows clearly that the construction given the statute by the Ohio court was consistent with both prior Ohio law and with the legislative history of the statute.[3] In such circumstances, any claim of inadequate notice under the Due Process Clause of the Fourteenth Amendment must be rejected.

III

Lockett challenges the constitutionality of Ohio's death penalty statute on a number of grounds. We find it necessary to consider only her contention that her death sentence is invalid because the statute under which it was imposed did not permit the sentencing judge to consider, as mitigating factors, her character, prior record, age, lack of specific intent to cause death, and her relatively minor part in the crime. To address her contention from the proper perspective, it is helpful to review the developments in our recent cases where we have applied the Eighth and Fourteenth Amendments to death penalty statutes. We do not write on a "clean slate."

A

Prior to *Furman v. Georgia,* 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), every State that authorized capital punishment had abandoned ***598** mandatory death penalties,[4] and instead permitted the jury unguided and unrestrained discretion regarding the imposition of the death penalty in a particular capital case.[5] Mandatory death penalties had proved unsatisfactory, as the plurality noted in *Woodson v. North Carolina,* 428 U.S. 280, 293, 96 S.Ct. 2978, 2986, 49 L.Ed.2d 944 (1976), in part because juries, "with some regularity, disregarded their oaths and refused to convict defendants where a death sentence was the automatic consequence of a guilty verdict."

This Court had never intimated prior to *Furman* that discretion in sentencing offended the Constitution. See *Pennsylvania ex rel. Sullivan v. Ashe,* 302 U.S. 51, 55, 58 S.Ct. 59, 60, 82 L.Ed. 43 (1937); *Williams v. New York,* 337 U.S. 241, 247, 69 S.Ct. 1079, 1083, 93 L.Ed. 1337 (1949); *Williams v. Oklahoma,* 358 U.S. 576, 585, 79 S.Ct. 421, 426, 3 L.Ed.2d 516 (1959). As recently as *McGautha v. California,* 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971), the Court had specifically rejected the contention that discretion in imposing the death penalty violated the fundamental standards of fairness embodied in Fourteenth Amendment due process, *id.,* at 207-208, 91 S.Ct., at 1467, and had asserted that States were entitled to assume that "jurors confronted with the truly awesome responsibility of decreeing death for a fellow human [would] act with due regard for the consequences of their decision." *Id.,* at 208, 91 S.Ct., at 1467.

The constitutional status of discretionary sentencing in capital cases changed abruptly, however, as a result of the separate opinions supporting the judgment in *Furman.* The question in *Furman* was whether "the imposition and carrying out of the death penalty [in the cases before the Court] constitute[d] cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." 408 U.S., at 239, 92 S.Ct., at 2727. Two Justices concluded that the Eighth Amendment prohibited the death penalty altogether and on that ground voted ***599** to reverse the judgments sustaining the death penalties. ****2962** *Id.,* at 305-306, 92 S.Ct., at 2760 (BRENNAN, J., concurring); *id.,* at 370-371, 92 S.Ct., at 2793 (MARSHALL, J., concurring). Three Justices were unwilling to hold the death penalty *per se* unconstitutional under the Eighth and Fourteenth Amendments, but voted to reverse the judgments on other grounds. In separate opinions, the three concluded that discretionary sentencing, unguided by legislatively defined standards, violated the Eighth Amendment because it was "pregnant with discrimination," *id.,* at 257, 92 S.Ct., at 2735 (Douglas, J., concurring), because it permitted the death penalty to be "wantonly" and "freakishly" imposed, *id.,* at 310, 92 S.Ct., at 2762 (STEWART, J., concurring), and because it

imposed the death penalty with "great infrequency" and afforded "no meaningful basis for distinguishing the few cases in which it [was] imposed from the many cases in which it [was] not," *id.*, at 313, 92 S.Ct., at 2764 (WHITE, J., concurring). Thus, what had been approved under the Due Process Clause of the Fourteenth Amendment in *McGautha* became impermissible under the Eighth and Fourteenth Amendments by virtue of the judgment in *Furman.* See,*Gregg v. Georgia,* 428 U.S. 153, 195-196, n. 47, 96 S.Ct. 2909, 2936, 49 L.Ed.2d 859 (1976) (opinion of STEWART, POWELL, and STEVENS, JJ.).

Predictably,[6] the variety of opinions supporting the judgment in *Furman* engendered confusion as to what was required in order to impose the death penalty in accord with the Eighth Amendment.[7] Some States responded to what was thought to ***600** be the command of *Furman* by adopting mandatory death penalties for a limited category of specific crimes thus eliminating all discretion from the sentencing process in capital cases.[8] Other States attempted to continue the practice of individually assessing the culpability of each individual defendant convicted of a capital offense and, at the same time, to comply with *Furman,* by providing standards to guide the sentencing decision.[9]

****2963** Four years after *Furman,* we considered Eighth Amendment ***601** issues posed by five of the post-*Furman* death penalty statutes.[10] Four Justices took the position that all five statutes complied with the Constitution; two Justices took the position that none of them complied. Hence, the disposition of each case varied according to the votes of three Justices who delivered a joint opinion in each of the five cases upholding the constitutionality of the statutes of Georgia, Florida, and Texas, and holding those of North Carolina and Louisiana unconstitutional.

The joint opinion reasoned that, to comply with *Furman,* sentencing procedures should not create "a substantial risk that the [death penalty will] be inflicted in an arbitrary and capricious manner." *Gregg v. Georgia, supra,* 428 U.S., at 188, 96 S.Ct., at 2932. In the view of the three Justices, however, *Furman* did not require that all sentencing discretion be eliminated, but only that it be "directed and limited," 428 U.S., at 189, 96 S.Ct., at 2932, so that the death penalty would be imposed in a more consistent and rational manner and so that there would be a "meaningful basis for distinguishing the . . . cases IN WHICH IT IS IMPOSED FROM . . . THE MANY CASES IN WHICH IT IS NOT." *id.,* at 188, 96 S.Ct., at 2932. The plurality concluded, in the course of invalidating North Carolina's mandatory death penalty statute, that the sentencing process must permit consideration of the "character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death," *Woodson v. North Carolina,* 428 U.S., at 304, 96 S.Ct., at 2991, in order to ensure the reliability, under Eighth Amendment standards, of the determination that "death is the appropriate punishment in a specific case." *Id.,* at 305, 96 S.Ct., at 2991; see *Roberts (Harry) v. Louisiana,* 431 U.S. 633, 637, 97 S.Ct. 1993, 1996, 52 L.Ed.2d 637 (1977); *Jurek v. Texas,* 428 U.S. 262, 271-272, 96 S.Ct. 2950, 2956, 49 L.Ed.2d 929 (1976).

***602** In the last decade, many of the States have been obliged to revise their death penalty statutes in response to the various opinions supporting the judgments in *Furman* and *Gregg* and its companion cases. The signals from this Court have not, however, always been easy to decipher. The States now deserve the clearest guidance that the Court can provide; we have an obligation to reconcile previously differing views in order to provide that guidance.

B

With that obligation in mind we turn to Lockett's attack on the Ohio statute. Essentially she contends that the Eighth and Fourteenth Amendments require that the sentencer be given a full opportunity to consider mitigating circumstances in capital cases and that the Ohio statute does not comply with that requirement. She relies, in large part, on the plurality opinions in *Woodson, supra,* 428 U.S., at 303-305, 96 S.Ct., at 2990-2991, and *Roberts (Stanislaus) v. Louisiana,* 428 U.S. 325, 333-334, 96 S.Ct. 3001, 3006, 49 L.Ed.2d 974 (1976), and the joint opinion in *Jurek, supra,* 428 U.S., at 271-272, 96 S.Ct., at 2956, but she goes beyond them.

[4] We begin by recognizing that the concept of individualized sentencing in criminal cases generally, although not constitutionally required, has long been accepted in this country. See *Williams v. New York,* 337 U.S., at 247-248, 69 S.Ct., at 1083; *Pennsylvania ex rel. Sullivan v. Ashe,* 302 U.S., at 55, 58 S.Ct., at 60. Consistent with that concept, sentencing judges traditionally have taken a wide range of factors into account. That States have authority to make aiders and abettors equally responsible, as a matter of law, with principals, or ****2964** to enact felony-murder statutes is beyond constitutional challenge. But the definition of crimes generally has not been thought automatically to dictate what should be the proper penalty. See *ibid.*; *Williams v. New York, supra,* at 247-248, 69 S.Ct., at 1083; *Williams v. Oklahoma,* 358 U.S., at 585, 79 S.Ct.,

at 426. And where sentencing discretion is granted, it generally ***603** has been agreed that the sentencing judge's "possession of the fullest information possible concerning the defendant's life and characteristics" is "[h]ighly relevant-*if not essential* -[to the] selection of an appropriate sentence . . .." *Williams v. New York, supra,* 337 U.S., at 247, 69 S.Ct., at 1083 (emphasis added).

The opinions of this Court going back many years in dealing with sentencing in capital cases have noted the strength of the basis for individualized sentencing. For example, Mr. Justice Black, writing for the Court in *Williams v. New York, supra*, at 247-248, 69 S.Ct., at 1083-a capital case-observed that the
"whole country has traveled far from the period in which the death sentence was an automatic and commonplace result of convictions-even for offenses today deemed trivial."

Ten years later, in *Williams v. Oklahoma, supra*, 358 U.S., at 585, 79 S.Ct., at 426, another capital case, the Court echoed Mr. Justice Black, stating that
"[i]n discharging his duty of imposing a proper sentence, the sentencing judge is authorized, *if not required*, to consider all of the mitigating and aggravating circumstances involved in the crime." (Emphasis added.)

See also *Furman v. Georgia*, 408 U.S., at 245-246, 92 S.Ct., at 2729-2730 (Douglas, J., concurring); *id.*, at 297-298, 92 S.Ct., at 2756 (BRENNAN, J., concurring); *id.*, at 339, 92 S.Ct., at 2777 (MARSHALL, J., concurring); *id.*, at 402-403, 92 S.Ct., at 2810 (BURGER, C. J., dissenting); *id.*, at 413, 92 S.Ct., at 2815 (BLACKMUN, J., dissenting); *McGautha v. California*, 402 U.S., at 197-203, 91 S.Ct., at 1462-1465. Most would agree that "the 19th century movement away from mandatory death sentences marked an enlightened introduction of flexibility into the sentencing process." *Furman v. Georgia, supra*, 408 U.S., at 402, 92 S.Ct., at 2810 (BURGER, C. J., dissenting).

Although legislatures remain free to decide how much discretion in sentencing should be reposed in the judge or jury in noncapital cases, the plurality opinion in *Woodson*, after ***604** reviewing the historical repudiation of mandatory sentencing in capital cases, 428 U.S., at 289-298, 96 S.Ct., at 2984-2988, concluded that
"in capital cases the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Id.*, at 304, 96 S.Ct., at 2991.

That declaration rested "on the predicate that the penalty of death is qualitatively different" from any other sentence. *Id.*, at 305, 96 S.Ct., at 2991. We are satisfied that this qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed. The mandatory death penalty statute in *Woodson* was held invalid because it permitted *no* consideration of "relevant facets of the character and record of the individual offender or the circumstances of the particular offense." *Id.*, at 304, 96 S.Ct., at 2991. The plurality did not attempt to indicate, however, which facets of an offender or his offense it deemed "relevant" in capital sentencing or what degree of consideration of "relevant facets" it would require.

[5] We are now faced with those questions and we conclude that the Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case,[11] not be precluded from considering, ****2965** *as a mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.[12] We recognize that, in noncapital ***605** cases, the established practice of individualized sentences rests not on constitutional commands, but on public policy enacted into statutes. The considerations that account for the wide acceptance of individualization of sentences in noncapital cases surely cannot be thought less important in capital cases. Given that the imposition of death by public authority is so profoundly different from all other penalties, we cannot avoid the conclusion that an individualized decision is essential in capital cases. The need for treating each defendant in a capital case with that degree of respect due the uniqueness of the individual is far more important than in noncapital cases. A variety of flexible techniques-probation, parole, work furloughs, to name a few-and various postconviction remedies may be available to modify an initial sentence of confinement in noncapital cases. The nonavailability of corrective or modifying mechanisms with respect to an executed capital sentence underscores the need for individualized consideration as a constitutional requirement in imposing the death sentence.[13]

There is no perfect procedure for deciding in which cases governmental authority should be used to impose death. But a statute that prevents the sentencer in all capital cases from giving independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation

creates the risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty. When the choice is between life and death, that risk is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments.

***606 C**

[6] The Ohio death penalty statute does not permit the type of individualized consideration of mitigating factors we now hold to be required by the Eighth and Fourteenth Amendments in capital cases. Its constitutional infirmities can best be understood by comparing it with the statutes upheld in *Gregg, Proffitt*, and *Jurek*.

In upholding the Georgia statute in *Gregg*, Justices STEWART, POWELL, and STEVENS noted that the statute permitted the jury "to consider any aggravating or mitigating circumstances," see *Gregg*, 428 U.S., at 206, 96 S.Ct., at 2941, and that the Georgia Supreme Court had approved "open and far-ranging argument" in presentence hearings, *id.*, at 203, 96 S.Ct., at 2939.[14] Although the Florida statute approved in *Proffitt* contained a list of mitigating factors, six Members of this Court assumed, in approving the statute, that the range of mitigating factors listed in the statute was ****2966** not exclusive.[15] *Jurek* involved a Texas statute which made no explicit reference to mitigating factors. 428 U.S., at 272, 96 S.Ct., at 2956. Rather, the jury was required to answer three ***607** questions in the sentencing process, the second of which was "whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society." Tex.Code Crim.Proc., Art. 37.071(b) (Supp.1975-1976); see 428 U.S., at 269, 96 S.Ct., at 2955. The statute survived the petitioner's Eighth and Fourteenth Amendment attack because three Justices concluded that the Texas Court of Criminal Appeals had broadly interpreted the second question-despite its facial narrowness-so as to permit the sentencer to consider "whatever mitigating circumstances" the defendant might be able to show. *Id.*, at 272-273, 96 S.Ct., at 2955 (opinion of STEWART, POWELL, and STEVENS, JJ.), citing and quoting, *Jurek v. State*, 522 S.W.2d 934, 939-940 (Tex.Crim.App.1975). None of the statutes we sustained in *Gregg* and the companion cases clearly operated at that time to prevent the sentencer from considering any aspect of the defendant's character and record or any circumstances of his offense as an independently mitigating factor.

In this regard the statute now before us is significantly different. Once a defendant is found guilty of aggravated murder with at least one of seven specified aggravating circumstances, the death penalty must be imposed unless, considering "the nature and circumstances of the offense and the history, character, and condition of the offender," the sentencing judge determines that at least one of the following mitigating circumstances is established by a preponderance of the evidence:
"(1) The victim of the offense induced or facilitated it.

"(2) It is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.

"(3) The offense was primarily the product of the offender's psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity." Ohio Rev.Code Ann. § 2929.04(B) (1975).

***608** The Ohio Supreme Court has concluded that there is no constitutional distinction between the statute approved in *Proffitt*, and Ohio's statute, see *State v. Bayless*, 48 Ohio St.2d 73, 86-87, 357 N.E.2d 1035, 1045-1046 (1976), because the mitigating circumstances in Ohio's statute are "liberally construed in favor of the accused." *State v. Bell*, 48 Ohio St.2d 270, 281, 358 N.E.2d 556, 563 (1976); see *State v. Bayless, supra*, 48 Ohio St.2d, at 86, 357 N.E.2d, at 1046, and because the sentencing judge or judges may consider factors such as the age and criminal record of the defendant in determining whether any of the mitigating circumstances is established, *State v. Bell, supra*, 48 Ohio St.2d, at 281, 358 N.E.2d, at 564. But even under the Ohio court's construction of the statute, only the three factors specified in the statute can be considered in mitigation of the defendant's sentence. See, 48 Ohio St.2d, at 281-282, 358 N.E.2d, at 564-565; *State v. Bayless, supra*, 48 Ohio St.2d, at 87 n. 2, 357 N.E.2d, at 1046 n. 2. We see, therefore, that once it is determined that the victim did not induce or facilitate the offense, that the defendant did not act under duress or coercion, and that the offense was not primarily the product of the defendant's mental deficiency, the Ohio statute mandates the sentence of death. The absence of direct proof that the defendant intended to cause the death of the victim is ****2967** relevant for mitigating purposes only if it is determined that it sheds some light on one of the three statutory mitigating factors. Similarly, consideration of a defendant's comparatively minor role in the offense, or age, would generally not be permitted, as such, to affect the sentencing decision.

The limited range of mitigating circumstances which may be considered by the sentencer under the Ohio statute is incompatible with the Eighth and Fourteenth Amendments. To meet constitutional requirements, a

death penalty statute must not preclude consideration of relevant mitigating factors.
Accordingly, the judgment under review is reversed to the *609 extent that it sustains the imposition of the death penalty, and the case is remanded for further proceedings.[16]
So ordered.

Mr. Justice BRENNAN took no part in the consideration or decision of this case.

APPENDIX TO OPINION OF THE COURT

The pertinent provisions of the Ohio death penalty statute, Ohio Rev.Code Ann. (1975), are as follows:

§ 2929.03 Imposing sentence for a capital offense.

(A) If the indictment or count in the indictment charging aggravated murder contains no specification of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge, the trial court shall impose sentence of life imprisonment on the offender.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender is guilty or not *610 guilty of each specification. The jury shall be instructed on its duties in this regard, which shall include an instruction that a specification must be proved beyond a reasonable doubt in order to support a guilty verdict on such specification, but such instruction shall not mention the penalty which may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then following a verdict of guilty of the charge but not guilty of each of the specifications, the trial court shall impose sentence of life imprisonment on the offender. If the indictment contains one or more specifications listed in division (A) of such section, then, following a verdict of guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be determined:

(1) By the panel of three judges which tried the offender upon his waiver of the right to trial by jury;

(2) By the trial judge, if the offender was tried by jury.

(D) When death may be imposed as a penalty for aggravated murder, the court shall require a pre-sentence investigation and a psychiatric examination to be made, and reports submitted to the court, pursuant to section 2947.06 of the Revised Code. **2968 Copies of the reports shall be furnished to the prosecutor and to the offender or his counsel. The court shall hear testimony and other evidence, the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, relevant to the penalty which should be imposed on the offender. If the offender chooses to make a *611 statement, he is subject to cross-examination only if he consents to make such statement under oath or affirmation.

(E) Upon consideration of the reports, testimony, other evidence, statement of the offender, and arguments of counsel submitted to the court pursuant to division (D) of this section, if the court finds, or if the panel of three judges unanimously finds that none of the mitigating circumstances listed in division (B) of section 2929.04 of the Revised Code is established by a preponderance of the evidence, it shall impose sentence of death on the offender. Otherwise, it shall impose sentence of life imprisonment on the offender.

§ 2929.04 Criteria for imposing death or imprisonment for a capital offense.

(A) Imposition of the death penalty for aggravated murder is precluded, unless one or more of the following is specified in the indictment or count in the indictment pursuant to section 2941.14 of the Revised Code, and is proved beyond a reasonable doubt:

(1) The offense was the assassination of the president of the United States or person in line of succession to the presidency, or of the governor or lieutenant governor of this state, or of the president-elect or vice president-elect of the United States, or of the governor-elect or lieutenant governor-elect of this state, or of a candidate for any of the foregoing offices. For purposes of this division, a person is a candidate if he has been nominated for election according to law, or if he has filed a petition or petitions according to law to have his name placed on the ballot in a primary or general election, or if he campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

***612** (4) The offense was committed while the offender was s a prisoner in a detention facility as defined in section 2921.01 of the Revised Code.

(5) The offender has previously been convicted of an offense of which the gist was the purposeful killing of or attempt to kill another, committed prior to the offense at bar, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer whom the offender knew to be such, and either the victim was engaged in his duties at the time of the offense, or it was the offender's specific purpose to kill a law enforcement officer.

(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary.

(B) Regardless of whether one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment and proved beyond a reasonable doubt, the death penalty for aggravated murder is precluded when, considering the nature and circumstances of the offense and the history, character, and condition of the offender, one or more of the following is established by a prepondence [preponderance] of the evidence:

(1) The victim of the offense induced or facilitated it.

(2) It is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.

(3) The offense was primarily the product of the offender's psychosis or mental ****2969** deficiency, though such ***613** condition is insufficient to establish the defense of insanity.

Mr. Justice BLACKMUN, concurring in part and concurring in the judgment.

I join the Court's judgment, but only Parts I and II of its opinion. I, too, would reverse the judgment of the Supreme Court of Ohio insofar as it upheld the imposition of the death penalty on petitioner Sandra Lockett, but I would do so for a reason more limited than that which the plurality espouses, and for an additional reason not relied upon by the plurality.

I

The first reason is that, in my view, the Ohio judgment in this case improperly provided the death sentence for a defendant who only aided and abetted a murder, without permitting any consideration by the sentencing authority of the extent of her involvement, or the degree of her *mens rea,* in the commission of the homicide. The Ohio capital penalty statute, together with that State's aiding-and-abetting statute, and its statutory definition of "purposefulness" as including reckless endangerment, allows for a particularly harsh application of the death penalty to any defendant who has aided or abetted the commission of an armed robbery in the course of which a person is killed, even though accidentally.[1] It might be that ***614** to inflict the death penalty in some such situations would skirt the limits of the Eighth Amendment proscription, incorporated in the Fourteenth Amendment, against gross disproportionality, but I doubt that the Court, in regard to murder, could easily define a convincing bright-line rule such as was used in regard to rape, *Coker v. Georgia,* 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 282 (1977), to make workable a disproportionality approach.[2]

***615** ****2970** The more manageable alternative, in my view, is to follow a proceduralist tack, and require, as Ohio does not, in the case of a nontriggerman such as Lockett, that the sentencing ***616** authority have discretion to consider the degree of the defendant's participation in the acts leading to the homicide and the character of the defendant's *mens rea.* That approach does not interfere with the States' individual statutory categories for assessing legal guilt, but merely requires that the sentencing authority be permitted to weigh any available evidence, adduced at trial or at the sentencing hearing, concerning the defendant's degree of participation in the homicide and the nature of his *mens rea* in regard to the commission of the homicidal act. A defendant would be permitted to adduce evidence, if any be available, that he had little or no reason to anticipate that a gun would be fired, or that he played only a minor part in the course of events leading to the use of fatal force. Though heretofore I have been unwilling to interfere with the legislative judgment of the States in regard to capital-sentencing procedures, see *Furman v. Georgia,* 408 U.S. 238, 405, 92 S.Ct. 2726, 2811, 33 L.Ed.2d 346 (1972) (dissenting opinion), adhered to in the 1976 cases, see my opinion in *Gregg v. Georgia,* 428 U.S.

153, 227, 96 S.Ct. 2909, 2971, 49 L.Ed.2d 859, 904; *Proffitt v. Florida*, 428 U.S. 242, 261, 96 S.Ct. 2960, 2970, 49 L.Ed.2d 913; *Jurek v. Texas*, 428 U.S. 262, 279, 96 S.Ct. 2950, 2960, 49 L.Ed.2d 929; *Woodson v. North Carolina*, 428 U.S. 280, 307, 96 S.Ct. 2978, 2993, 49 L.Ed.2d 944; *Roberts v. Louisiana*, 428 U.S. 325, 363, 96 S.Ct. 3001, 3020, 49 L.Ed.2d 974, this Court's judgment as to disproportionality in *Coker, supra,* in which I joined, and the unusual degree to which Ohio requires capital punishment of a mere aider and abettor in an armed felony resulting in a fatality even where *no* participant specifically intended the fatal use of a weapon, see n. 1, *supra,* provides a significant occasion for setting some limit to the method by which the States assess punishment for actions less immediately connected to the deliberate taking of human life.

This approach is not too far off the mark already used by many States in assessing the death penalty. Of 34 States that now have capital statutes, 18 specify that a minor degree of participation in a homicide may be considered by the ***617** sentencing authority, and, of the remaining 16 States, 9 ****2971** allow consideration of any mitigating factor.[3]

II

The second ground on which reversal is required, in my view, is a *Jackson* issue. Although the plurality does not reach this issue, it is raised by petitioner, and I mention it against the possibility that any further revision of the Ohio death penalty statutes, prompted by the Court's decision today, contemplate as well, and cure, the *Jackson* deficiency.

In *United States v. Jackson,* 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968), the Court held that the capital-sentencing provision of the Federal Kidnaping Act was unconstitutional in that it needlessly burdened the defendant's exercise of the Sixth Amendment ***618** right to trial by jury and the Fifth Amendment right to plead not guilty. The Act, 18 U.S.C. § 1201(a) (1964 ed.), had provided that the death penalty could be imposed only "if the verdict of the jury shall so recommend," thus peculiarly insuring that any defendant who pleaded guilty, or who waived a jury trial in favor of a bench trial, could not be sentenced to death, and imposing the risk of death only on those who insisted on trial by jury.

The holding of *Jackson,* prohibiting imposition of the death penalty on a defendant who insists upon a jury trial, was thereafter limited to an extent by *Brady v. United States,* 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970), where the Court held that a pre-*Jackson* defendant who had pleaded guilty rather than go to trial was not entitled to withdraw his plea on grounds of involuntariness or coercion even if the plea had been encouraged by fear of the death penalty in a jury trial. Here, of course, petitioner insisted on her right to a jury trial, and thus falls on the *Jackson* side of any *Jackson-Brady* dichotomy.

Under Ohio Rule Crim.Proc. 11(C)(3), the sentencing court has full discretion to prevent imposition of a capital sentence "in the interests of justice" *if* a defendant pleads guilty or no contest, but wholly lacks such discretion if the defendant goes to trial. The Rule states that if "the indictment contains one or more specifications [of aggravating circumstances], and a plea of guilty or no contest to the charge [of aggravated murder with specifications] is accepted, the court may dismiss the specifications and impose sentence [of life imprisonment] accordingly, in the interests of justice." Such a dismissal of aggravating specifications absolutely precludes imposition of the death penalty. There is *no* provision similar to Rule 11(C)(4) permitting the trial court to dismiss aggravating specifications "in the interests of justice" where the defendant insists on his right to trial. Instead, as the Ohio Supreme Court noted in *State v. Weind,* 50 Ohio St.2d 224, 227, 364 N.E.2d 224, 228 (1977), vacated in part and remanded, ****2972** 438 U.S. 911, 98 S.Ct. 3137, 57 L.Ed.2d 1156 (1978), a defendant who pleads not guilty ***619** "must rely on the court finding the presence of one of the [statutory] mitigating circumstances . . . to avoid the death sentence."

While it is true, as the Ohio Court noted in *Weind,* 50 Ohio St.2d, at 229, 364 N.E.2d, at 229, that there is always a possibility of a death sentence whether or not one pleads guilty, this does not change the fact that a defendant can plead not guilty only by enduring a semimandatory, rather than a purely discretionary, capital-sentencing provision. This disparity between a defendant's prospects under the two sentencing alternatives is, in my view, too great to survive under *Jackson,* and petitioner's death sentence thus should be vacated on that ground as well.

Mr. Justice MARSHALL, concurring in the judgment.

I continue to adhere to my view that the death penalty is, under all circumstances, a cruel and unusual punishment prohibited by the Eighth Amendment. See *Furman v. Georgia,* 408 U.S. 238, 314-374, 92 S.Ct. 2726, 2764-2796, 33 L.Ed.2d 346 (1972) (MARSHALL, J., concurring); *Gregg v. Georgia,* 428 U.S. 153, 231-241, 96 S.Ct. 2909, 2973-2977, 49 L.Ed.2d 859 (1976)

(MARSHALL, J., dissenting). The cases that have come to this Court since its 1976 decisions permitting imposition of the death penalty have only persuaded me further of that conclusion. See, *e. g., Gardner v. Florida,* 430 U.S. 349, 365, 97 S.Ct. 1197, 1208, 51 L.Ed.2d 393 (1977) (MARSHALL, J., dissenting); *Coker v. Georgia,* 433 U.S. 584, 600-601, 97 S.Ct. 2861, 2869-2870, 53 L.Ed.2d 282 (1977) (MARSHALL, J., concurring in judgment); *Alford v. Florida,* 436 U.S. 935, 98 S.Ct. 2835, 56 L.Ed.2d 778 (1978) (MARSHALL, J., dissenting from denial of certiorari). This case, as well, serves to reinforce my view.

When a death sentence is imposed under the circumstances presented here, I fail to understand how any of my Brethren-even those who believe that the death penalty is not wholly inconsistent with the Constitution-can disagree that it must be vacated. Under the Ohio death penalty statute, this 21-year-old Negro woman was sentenced to death for a killing that she did not actually commit or intend to commit. She was convicted under a theory of vicarious liability. The ***620** imposition of the death penalty for this crime totally violates the principle of proportionality embodied in the Eighth Amendment's prohibition. *Weems v. United States,* 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793 (1910); it makes no distinction between a willful and malicious murderer and an accomplice to an armed robbery in which a killing unintentionally occurs. See 49 Ohio St.2d 48, 67, 358 N.E.2d 1062, 1075 (1976) (dissenting opinion).

Permitting imposition of the death penalty solely on proof of felony murder, moreover, necessarily leads to the kind of "lightning bolt," "freakish," and "wanton" executions that persuaded other Members of the Court to join Mr. Justice BRENNAN and myself in *Furman v. Georgia, supra,* in holding Georgia's death penalty statute unconstitutional. Whether a death results in the course of a felony (thus giving rise to felony-murder liability) turns on fortuitous events that do not distinguish the intention or moral culpability of the defendants. That the State of Ohio chose to permit imposition of the death penalty under a purely vicarious theory of liability seems to belie the notion that the Court can discern the "evolving standards of decency," *Trop v. Dulles,* 356 U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed.2d 630 (1958) (plurality opinion), embodied in the Eighth Amendment, by reference to state "legislative judgment," see *Gregg v. Georgia, supra,* 428 U.S., at 175, 96 S.Ct., at 2926 (opinion of STEWART, POWELL, and STEVENS, JJ.).

As the plurality points out, petitioner was sentenced to death under a statutory scheme that precluded any effective consideration of her degree of involvement in the crime, her age, or her prospects for rehabilitation. Achieving the proper balance between clear guidelines that assure relative ****2973** equality of treatment, and discretion to consider individual factors whose weight cannot always be preassigned, is no easy task in any sentencing system. Where life itself is what hangs in the balance, a fine precision in the process must be insisted upon. The Ohio statute, with its blunderbuss, virtually mandatory approach to imposition of the death penalty for certain crimes, ***621** wholly fails to recognize the unique individuality of every criminal defendant who comes before its courts. See *Roberts (Harry) v. Louisiana,* 431 U.S. 633, 637, 97 S.Ct. 1993, 1996, 52 L.Ed.2d 637 (1977) (*per curiam*); *Woodson v. North Carolina,* 428 U.S. 280, 304, 96 S.Ct. 2978, 2991, 49 L.Ed.2d 944 (1976).

The opinions announcing the judgment of the Court in *Gregg v. Georgia,* 428 U.S., at 188-198, 96 S.Ct., at 2932-2936 (opinion of STEWART, POWELL, and STEVENS, JJ.), *Jurek v. Texas,* 428 U.S. 262, 271-276, 96 S.Ct. 2950, 2956-2958, 49 L.Ed.2d 929 (1976) (opinion of STEWART, POWELL, and STEVENS, JJ.), and *Proffitt v. Florida,* 428 U.S. 242, 259-260, 96 S.Ct. 2960, 2969-2970, 49 L.Ed.2d 913 (1976) (opinion of STEWART, POWELL, and STEVENS, JJ.), upheld the constitutionality of the death penalty, in the belief that a system providing sufficient guidance for the sentencing decisionmaker and adequate appellate review would assure "rationality," "consistency," and "proportionality" in the imposition of the death sentence. *Gregg v. Georgia, supra,* at 203, 96 S.Ct., at 2939; *Proffitt v. Florida, supra,* at 259, 96 S.Ct., at 2969; *Jurek v. Texas, supra,* at 276, 96 S.Ct., at 2958. That an Ohio trial court could impose the death penalty on petitioner under these facts, and that the Ohio Supreme Court on review could sustain it, cast strong doubt on the plurality's premise that appellate review in state systems is sufficient to avoid the wrongful and unfair imposition of this irrevocable penalty.

Accordingly, I join in the Court's judgment insofar as it affirms petitioner's conviction and vacates her death sentence. I do not, however, join in the Court's assumption that the death penalty may ever be imposed without violating the command of the Eighth Amendment that no "cruel and unusual punishments" be imposed.

***628** Mr. Justice REHNQUIST, concurring in part and dissenting in part.

I join Parts I and II of THE CHIEF JUSTICE's opinion for the Court, but am unable to join Part III of his opinion or in the judgment of reversal.

I

Whether out of a sense of judicial responsibility or a less altruistic sense of futility, there are undoubtedly circumstances which require a Member of this Court "to bow to the authority" of an earlier case despite his "original and continuing belief that the decision was constitutionally wrong." *Burns v. Richardson,* 384 U.S. 73, 98, 86 S.Ct. 1286, 1300, 16 L.Ed.2d 376 (1966) (Harlan, J., concurring in result). See also *Id.,* at 99, 86 S.Ct., at 1300 (STEWART, J., concurring in judgment). The Court has most assuredly not adopted the dissenting views which I expressed in the previous capital ***629** punishment cases, see *Woodson v. North Carolina,* 428 U.S. 280, 308, 96 S.Ct. 2978, 2993, 49 L.Ed.2d 944 (1976), and *Furman v. Georgia,* 408 U.S. 238, 465, 92 S.Ct. 2726, 2841, 33 L.Ed.2d 346 (1972). It has just as surely not cloven to a principled doctrine either holding the infliction of the death penalty to be unconstitutional *per se* or clearly and understandably stating the terms under which the Eighth and Fourteenth Amendments permit the death penalty to be imposed. Instead, as I believe both the opinion of THE CHIEF JUSTICE and the opinion of my Brother WHITE seem to concede, the Court has gone from pillar to post, with the result that the sort of reasonable predictability upon which legislatures, trial courts, and appellate courts must of necessity rely has been all but completely sacrificed.

THE CHIEF JUSTICE states: "We do not write on a 'clean slate,' " *ante,* at 2961. But it can scarcely be maintained that today's decision is the logical application of a ****2974** coherent doctrine first espoused by the opinions leading to the Court's judgment in *Furman,* and later elaborated in the *Woodson* series of cases decided two Terms ago. Indeed, it cannot even be responsibly maintained that it is a principled application of the plurality and lead opinions in the *Woodson* series of cases, without regard to *Furman.* The opinion strives manfully to appear as a logical exegesis of those opinions, but I believe that it fails in the effort. We are now told, in effect, that in order to impose a death sentence the judge or jury must receive in evidence whatever the defense attorney wishes them to hear. I do not think THE CHIEF JUSTICE's effort to trace this quite novel constitutional principle back to the plurality and lead opinions in the *Woodson* cases succeeds.

As the opinion admits, *ante,* at 2965 n. 14, the statute upheld in *Gregg v. Georgia,* 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), permitted the sentencing authority to consider only those mitigating circumstances " 'authorized by law.' " *Id.,* at 164, 96 S.Ct., at 2920 (opinion of STEWART, POWELL, and STEVENS, JJ.) (citation omitted). Today's opinion goes on to say: "Although the Florida statute ***630** approved in *Proffitt* [*v. Florida,* 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976)] contained a list of mitigating factors, six Members of this Court assumed . . . that the range of mitigating factors listed in the statute was not exclusive." *Ante,* at 2966, and n. 15, citing *Proffitt, supra,* at 250 n. 8, 260, 96 S.Ct., at 2965. The footnote referred to discussed whether the Florida court would uphold a death sentence that rested entirely on nonstatutory aggravating circumstances. The reference to the absence of limiting language with respect to the list of statutory mitigating factors was employed to emphasize the different statutory treatment of aggravating circumstances. Indeed, only one page later the joint opinion stated: "The sentencing authority in Florida, the trial judge, is directed to weigh eight aggravating factors against seven mitigating factors to determine whether the death penalty shall be imposed." 428 U.S., at 251, 96 S.Ct., at 2966. The other *Proffitt* opinion referred to in today's opinion, the dissenting opinion of Mr. Justice WHITE, *id.,* at 260, 96 S.Ct., at 2970, said of mitigating circumstances: "[A]lthough the statutory aggravating and mitigating circumstances are not susceptible of mechanical application, they are by no means so vague and overbroad as to leave the discretion of the sentencing authority unfettered."

The opinion's effort to find support for today's rule in our opinions in *Jurek v. Texas,* 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976), is equally strained. The lead opinion there read the opinion of the Texas Court of Criminal Appeals to interpret the statute "so as to allow a defendant to bring to the jury's attention whatever mitigating circumstances he may be able to show," *id.,* at 272, 96 S.Ct., at 2956, and went on to quote several specified types of mitigating circumstances which were mentioned in the Texas court's opinion. I think it clear from this context that the term "mitigating circumstances" was *not* so broad as to encompass any evidence which the defense attorney saw fit to present to a judge or jury.

It seems to me indisputably clear from today's opinion that, ***631** while we may not be writing on a clean slate, the Court is scarcely faithful to what has been written before. Rather, it makes a third distinct effort to address the same question, an effort which derives little support from any of the various opinions in *Furman* or from the prevailing opinions in the *Woodson* cases. As a practical matter, I doubt that today's opinion will make a great deal of difference in the manner in which trials in capital cases are conducted, since I would suspect that it has been the practice of most trial judges to permit a defendant to offer virtually any sort of evidence in his own defense as he wished. But as my Brother WHITE points out in his dissent, the theme of today's opinion, far from supporting

those views expressed in *Furman* which did appear to be carried over to the *Woodson* cases, tends to undercut those views. If a defendant as **2975 a matter of constitutional law is to be permitted to offer as evidence in the sentencing hearing any fact, however bizarre, which he wishes, even though the most sympathetically disposed trial judge could conceive of no basis upon which the jury might take it into account in imposing a sentence, the new constitutional doctrine will not eliminate arbitrariness or freakishness in the imposition of sentences, but will codify and institutionalize it. By encouraging defendants in capital cases, and presumably sentencing judges and juries, to take into consideration anything under the sun as a "mitigating circumstance," it will not guide sentencing discretion but will totally unleash it. It thus appears that the evil described by the *Woodson* plurality-that mandatory capital sentencing "papered over the problem of unguided and unchecked jury discretion," 428 U.S., at 302, 96 S.Ct., at 2990-was in truth not the unchecked discretion, but a system which "papered over" its exercise rather than spreading it on the record.

I did not, either at the time of the *Furman* decision or the decision in the *Woodson* cases, agree with the views expressed in *Furman* which I thought the lead opinions in the *Woodson* *632 cases sought to carry over into those opinions. I do, however, agree with the statements as to institutional responsibility contained in the separate opinions in *Burns v. Richardson*, 384 U.S. 73, 86 S.Ct. 1286, 16 L.Ed.2d 376 (1966), and I trust that I am not insensitive to THE CHIEF JUSTICE's expressed concern in his opinion that "[t]he States now deserve the clearest guidance that the Court can provide" on capital punishment. *Ante,* at 2963. Given the posture of my colleagues in this case, however, there does not seem to me to be any way in which I can assist in the discharge of that obligation. I am frank to say that I am uncertain whether today's opinion represents the seminal case in the exposition by this Court of the Eighth and Fourteenth Amendments as they apply to capital punishment, or whether instead it represents the third false start in this direction within the past six years.

A majority of the Court has yet to endorse the course taken by today's plurality in using the Eighth Amendment as a device for importing into the trial of capital cases extremely stringent procedural restraints. The last opinion on that subject to command a majority of this Court was that of Mr. Justice Harlan in *McGautha v. California,* 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971), in which he spoke for the Court in these words:
"It may well be, as the American Law Institute and the National Commission on Reform of Federal Criminal Laws have concluded, that bifurcated trials and criteria for jury sentencing discretion are superior means of dealing with capital cases if the death penalty is to be retained at all. But the Federal Constitution, which marks the limits of our authority in these cases, does not guarantee trial procedures that are the best of all worlds, or that accord with the most enlightened ideas of students of the infant science of criminology, or even those that measure up to the individual predilections of members of this Court. See *Spencer v. Texas,* 385 U.S. 554, 87 S.Ct. 648, 17 L.Ed.2d 606 (1967). The Constitution requires no more than that trials be *633 fairly conducted and that guaranteed rights of defendants be scrupulously respected." *Id.,* at 221, 91 S.Ct., at 1474.

I continue to view *McGautha* as a correct exposition of the limits of our authority to revise state criminal procedures in capital cases under the Eighth and Fourteenth Amendments. Sandra Lockett was fairly tried, and was found guilty of aggravated murder. I do not think Ohio was required to receive any sort of mitigating evidence which an accused or his lawyer wishes to offer, and therefore I disagree with Part III of the plurality's opinion.

II

Because I reject the primary contentions offered by petitioner, I must also address her other arguments, with which the Court **2976 does not wish to deal, in order to conclude that the State may impose the death penalty. Two of petitioner's objections can be dismissed with little comment. First, she complains that the Ohio procedure does not permit jury participation in the sentencing process. As the lead opinion pointed out in *Proffitt,* 428 U.S., at 252, 96 S.Ct., at 2966, this Court "has never suggested that jury sentencing is constitutionally required." No majority of this Court has ever reached a contrary conclusion, and I would not do so today. Second, she contends that the State should be required to prove the absence of mitigating factors beyond a reasonable doubt. Because I continue to believe that the Constitution is not offended by the State's refusal to consider mitigating factors at all, there can be no infirmity in shifting the burden of persuasion to the defendant when it chooses to consider them.

Petitioner also presents two arguments based on *United States v. Jackson,* 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968), in which the Court held that the imposition of the death penalty under the Federal Kidnaping Act, 18 U.S.C. § 1201(a) (1964 ed.), was unconstitutional because it could only be imposed where

the defendant exercised his right to trial by jury. First, petitioner ***634** attacks the provision of the statute requiring three judges, rather than one, to hear the case when a defendant chooses to be tried by the court rather than the jury. She contends that the three judges are less likely to impose the death penalty than would be the single judge who determines sentence in the case of a jury trial. To that extent, she argues, the exercise of the right to a jury trial is discouraged because of a fear of a higher probability of the imposition of the death penalty. This argument cannot be supported. There is simply no reason to conclude that three judges are less likely than one to impose the death sentence on a convicted murderer. At the same time, it is at least equally plausible that the three judges would be less likely than a jury to convict in the first instance. Thus, at the time when an accused defendant must choose between a trial before the jury and a trial to the court, it simply cannot be said which is more likely to result in the imposition of death. Since both procedures are sufficiently fair to satisfy the Constitution. I see no infirmity in requiring petitioner to choose which she prefers.

Second, petitioner complains that the trial court has the authority to dismiss the specifications of aggravating circumstances, thus precluding the imposition of the death penalty, only when a defendant pleads guilty or no contest. She contends that this limitation upon the availability of judicial mercy unfairly penalizes her right to plead not guilty. While *Jackson* may offer some support for this contention, it certainly does not compel its acceptance. In *Jackson*, the defendant could have been executed if he exercised his right to a jury trial, but could not have been executed if he waived it. In Ohio, a defendant is subject to possible execution whether or not he pleads guilty. Furthermore, if he chooses to plead guilty, he is not subject to possible acquittal. Under such circumstances, it is difficult to imagine that any defendant will be deterred from exercising his right to go to trial. Indeed, petitioner was not so deterred, and respondent reports that ***635** no one in petitioner's county has ever pleaded guilty to capital murder. Brief for Respondent 36. The mere fact that petitioner was required to choose hardly amounts to a constitutional violation. In *McGautha, supra,* 402 U.S., at 212-213, 91 S.Ct., at 1469-1470, the Court explained an earlier decision, *Simmons v. United States,* 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968), in which it had invalidated a conviction because the defendant had been required to forego his Fifth Amendment privilege against self-incrimination to protect a Fourth Amendment claim. Here petitioner's assertion of her right to go to trial would have deprived her only of a statutory possibility of mercy, not of constitutional dimensions, enjoyed by other defendants in Ohio. Nothing in *Jackson* suggests that such a choice is forbidden by the Fourteenth Amendment.

****2977** I finally reject the proposition urged by my Brother WHITE in his separate opinion, which the plurality finds it unnecessary to reach. That claim is that the death penalty, as applied to one who participated in this murder as Lockett did, is "disproportionate" and therefore violative of the Eighth and Fourteenth Amendments. I know of no principle embodied in those Amendments, other than perhaps one's personal notion of what is a fitting punishment for a crime, which would allow this Court to hold the death penalty imposed upon her unconstitutional because under the judge's charge to the jury the latter were not required to find that she intended to cause the death of her victim. As my Brother WHITE concedes, approximately half of the States "have not legislatively foreclosed the possibility of imposing the death penalty upon those who do not intend to cause death." 438 U.S., at 625, 98 S.Ct., at 2983. Centuries of common-law doctrine establishing the felony-murder doctrine, dealing with the relationship between aiders and abettors and principals, would have to be rejected to adopt this view. Just as surely as many thoughtful moralists and penologists would reject the Biblical notion of "an eye for an eye, a tooth for a tooth," as a guide for minimum sentencing, there is nothing in the prohibition against ***636** cruel and unusual punishments contained in the Eighth Amendment which sets that injunction as a limitation on the maximum sentence which society may impose.

Since all of petitioner's claims appear to me to be without merit, I would affirm the judgment of the Supreme Court of Ohio.

Parallel Citations

98 S.Ct. 2954, 57 L.Ed.2d 973, 9 O.O.3d 26

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 The pertinent provisions of the Ohio death penalty statute appear as an appendix to this opinion.

2 The presentence report also contained information about the robbery. It indicated that Dew had told the police that he, Parker, and Lockett's brother had planned the holdup. It also indicated that Parker had told the police that Lockett had not followed his order to keep the car running during the robbery and instead had gone to get something to eat.

3 See 49 Ohio St.2d 48, 58-62, 358 N.E.2d 1062, 1070-1072 (1976); *id.*, at 69-70, 358 N.E.2d, at 1076 (Stern, J., dissenting).

4 See *Woodson v. North Carolina,* 428 U.S. 280, 291-292, and n. 25, 96 S.Ct. 2978, 2984-2985, 49 L.Ed.2d 944 (1976) (opinion of STEWART, POWELL, and STEVENS, JJ.).

5 See *id.*, at 291-292, 92 S.Ct., at 2753; *McGautha v. California,* 402 U.S. 183, 200 n. 11, 91 S.Ct. 1454, 1463, 28 L.Ed.2d 711 (1971).

6 See *Furman v. Georgia,* 408 U.S. 238, 403, 92 S.Ct. 2726, 2810, 33 L.Ed.2d 346 (1972) (BURGER, C. J., dissenting).

7 The limits on the consideration of mitigating factors in Ohio's death penalty statute which Lockett now attacks appear to have been a direct response to *Furman.* Prior to *Furman,* Ohio had begun to revise its system of capital sentencing. The Ohio House of Representatives had passed a bill abandoning the practice of unbridled sentencing discretion and instructing the sentencer to consider a list of aggravating and mitigating circumstances in determining whether to impose the death penalty. The list of mitigating circumstances permitted consideration of any circumstance "tending to mitigate the offense, though failing to establish a defense." See Sub. House Bill 511, 109th Ohio General Assembly § 2929.03(C)(3), passed by the Ohio House on March 22, 1972; Lehman & Norris, Some Legislative History and Comments on Ohio's New Criminal Code, 23 Cleve.St.L.Rev. 8, 10, 16 (1974). *Furman* was announced during the Ohio Senate Judiciary Committee's consideration of the Ohio House bill. After *Furman,* the Committee decided to retain the death penalty but to eliminate much of the sentencing discretion permitted by the House bill. As a result, the Ohio Senate developed the current sentencing procedure which requires the imposition of the death penalty if one of seven specific aggravating circumstances and none of three specific mitigating circumstances is found to exist. Confronted with what reasonably would have appeared to be the questionable constitutionality of permitting discretionary weighing of mitigating factors after *Furman,* the sponsors of the Ohio House bill were not in a position to mount a strong opposition to the Senate's amendments, see Lehman & Norris, *supra,* at 18-22, and the statute under which Lockett was sentenced was enacted.

8 See, *e. g., Woodson, supra,* 428 U.S., at 300, 96 S.Ct., at 2989 (opinion of STEWART, POWELL, and STEVENS, JJ.); *Rockwell v. Superior Court,* 18 Cal.3d 420, 446-448, 134 Cal.Rptr. 650, 665-667, 556 P.2d 1101, 1116-1118 (1976) (Clark, J., concurring) (account of how California and other States enacted unconstitutional mandatory death penalties in response to *Furman*); *State v. Spence,* 367 A.2d 983, 985-986 (Del.Supr.1976) (Delaware Legislature and court interpreted *Furman* as requiring elimination of all sentencing discretion resulting in an unconstitutional statute); Liebman & Shepard, Guiding Capital Sentencing Discretion Beyond the "Boiler Plate": Mental Disorder as a Mitigating Factor, 66 Geo.L.J. 757, 765 n. 43 (1978).

9 See Note, Discretion and the Constitutionality of the New Death Penalty Statutes, 87 Harv.L.Rev. 1690, 1690-1710 (1974).

10 *Gregg v. Georgia,* 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976); *Proffitt v. Florida,* 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976); *Jurek v. Texas,* 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976); *Woodson v. North Carolina, supra;* and *Roberts (Stanislaus) v. Louisiana,* 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976).

11 We express no opinion as to whether the need to deter certain kinds of homicide would justify a mandatory death sentence as, for example, when a prisoner-or escapee-under a life sentence is found guilty of murder. See *Roberts (Harry) v. Louisiana,* 431 U.S. 633, 637 n. 5, 97 S.Ct. 1993, 1996, 52 L.Ed.2d 637 (1977).

12 Nothing in this opinion limits the traditional authority of a court to exclude, as irrelevant, evidence not bearing on the defendant's character, prior record, or the circumstances of his offense.

13 Sentencing in noncapital cases presents no comparable problems. We emphasize that in dealing with standards for imposition of the death sentence we intimate no view regarding the authority of a State or of the Congress to fix mandatory, minimum sentences for noncapital crimes.

14 The statute provided that, in sentencing, the jury should consider "any mitigating circumstances or aggravating circumstances otherwise authorized by law" in addition to 10 specified aggravating circumstances. See Ga.Code Ann. § 27.2534.1(b) (Supp.1975). Mr. Justice WHITE, who also voted to uphold the statute in an opinion joined by THE CHIEF JUSTICE and Mr. Justice REHNQUIST, noted that the Georgia Legislature had decided to permit "the jury to dispense mercy on the basis of factors

too intangible to write into a statute." *Gregg*, 428 U.S., at 222, 96 S.Ct., at 2947.

15 The opinion of Justices STEWART, POWELL, and STEVENS in *Proffitt* noted that the Florida statute "provides that '[a]ggravating circumstances shall be *limited* to . . . [eight specified factors]' " and that there was "no such limiting language introducing the list of statutory mitigating factors." 428 U.S., at 250 n. 8, 96 S.Ct., at 2966 n. 8. Mr. Justice WHITE, joined by THE CHIEF JUSTICE and Mr. Justice REHNQUIST, accepted the interpretation of the statute contained in the opinion of Justices STEWART, POWELL, and STEVENS. See *id.*, at 260, 96 S.Ct., at 2970.

16 In view of our holding that Lockett was not sentenced in accord with the Eighth Amendment, we need not address her contention that the death penalty is constitutionally disproportionate for one who has not been proved to have taken life, to have attempted to take life, or to have intended to take life, or her contention that the death penalty is disproportionate as applied to her in this case. Nor do we address her contentions that the Constitution requires that the death sentence be imposed by a jury; that the Ohio statutory procedures impermissibly burden the defendant's exercise of his rights to plead not guilty and to be tried by a jury; and that it violates the Constitution to require defendants to bear the risk of nonpersuasion as to the existence of mitigating circumstances in capital cases.

1 Ohio Rev.Code Ann. § 2903.01(B) (1975) provides that "[n]o person shall purposely cause the death of another while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit . . . aggravated robbery," and § 2903.01(C) states that one doing so is guilty of aggravated murder. Under § 2929.04(A)(7), the commission of the same armed robbery serves as an aggravating specification to the murder and requires the imposition of the death penalty upon the principal offender unless the existence of one of the three permitted mitigating circumstances is established by a preponderance of the evidence. Sections 2923.03(A) and (F) provide that an aider or abettor who acts "with the kind of culpability required for the commission of [the principal] offense" shall be "prosecuted and punished as if he were a principal offender." The finishing stroke is then delivered by Ohio's statutory definition of "purpose." Under § 2901.22(A), "[a] person acts purposely when it is his specific intention to cause a certain result, or, *when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.*" (Emphasis added.)
In this case, as the three dissenting justices of the Ohio Supreme Court noted, 49 Ohio St.2d 48, 68, 358 N.E.2d 1062, 1075 (1976), the jury was instructed that Lockett could be found to have "purposely" aided a murder merely by taking part in a robbery in which the threat of force was to be employed. The jury was instructed: "If the conspired robbery and the manner of its accomplishment would be reasonably likely to produce death, each plotter is equally guilty with the principal offender as an aider and abettor in the homicide, even though the aider and abettor was not aware of the particular weapon used to accomplish the killing."
The State presented no testimony indicating any prior plan actually to fire the gun in the course of the robbery. The triggerman, Parker, testified that the gun discharged accidentally when the proprietor of the pawnshop grabbed at it. App. 50-51, 53.

2 I do not find entirely convincing the disproportionality rule embraced by my Brother WHITE. The rule that a defendant must have Eighth Amendment purposes. What if a defendant personally commits the act proximately causing death by pointing a loaded gun at the robbery victim, verbally threatens to use fatal force, admittedly does not intend to cause a death, yet knowingly creates a high probability that the gun will discharge accidentally? What if a robbery participant, in order to avoid capture or even for wanton sport, personally and deliberately uses grave physical force with conscious intent to inflict serious bodily harm, but not to kill, and a death results? May we as judges say that for Eighth Amendment purposes the absence of a "conscious purpose of producing death," *post,* at 2985, transforms the culpability of those defendants' actions?
Applying a requirement of actual intent to kill to defendants not immediately involved in the physical act causing death, moreover, would run aground on intricate definitional problems attending a felony murder. What intention may a State attribute to a robbery participant who sits in the getaway car, knows that a loaded gun will be brandished by his companion in the robbery inside the store, is willing to have the gun fired if necessary to make an escape but not to accomplish the robbery, when the victim is shot by the companion even though not necessary for escape? What if the unarmed participant stands immediately inside the store as a lookout, intends that a loaded gun merely be brandished, but never bothered to discuss with the triggerman what limitations were appropriate for the firing of the gun? What if the same lookout personally intended that the gun never be fired, but, after his companion fires a fatal shot to prevent the victim from sounding an alarm, approves and takes off?
The requirement of actual intent to kill in order to inflict the death penalty would require this Court to impose upon the States an elaborate "constitutionalized" definition of the requisite *mens rea,* involving myriad problems of line drawing that normally are left to jury discretion but that, in disproportionality analysis, have to be decided as issues of law, and interfering with the substantive categories of the States' criminal law. And such a rule, even if workable, is an incomplete method of ascertaining culpability for Eighth Amendment purposes, which necessarily is a more subtle mixture of action, inaction, and degrees of *mens rea.*
Finally, I must question the data relied upon by my Brother WHITE in concluding, *post,* at 2983, that only "extremely rare[ly]" has the death penalty been used when a defendant did not specifically intend the death of the victim. The representation made by petitioner Lockett, even if accepted uncritically, was merely that, of 363 reported cases involving executions from 1954 to 1976, in 347 the defendant "personally committed a homicidal assault"-not that the defendant had actual intention to kill. App. to Brief for Petitioner 1b. Of contemporary death penalty statutes, my Brother WHITE concedes that approximately half permit the execution of persons who did not actually intend to cause death.

[3] The 18 state statutes specifically permitting consideration of a defendant's minor degree of involvement are Ala. Code, Tit. 13, § 13-11-7(4) (1975); Ariz.Rev.Stat.Ann. § 13-454(F)(3) (Supp.1977); Ark.Stat.Ann. § 41-1304(5) (1977); Cal. Penal Code Ann. § 190.3(i) (West Supp.1978); Fla.Stat. § 921.141(6)(d) (Supp.1978); Ind. Code § 35-50-2-9(c)(4) (Supp.1977); Ky.Rev.Stat. § 532.025(2)(b)(5) (Supp.1977); La. Code Crim.Proc., Art. 905.5(g) (West Supp.1978); Mo.Rev.Stat. § 565.012.3(4) (Supp.1978); Mont.Rev. Codes Ann. § 95-2206.9(6) (Supp.1977); Neb.Rev.Stat. § 29-2523(2)(e) (1975); Nev.Rev.Stat. § 200.035(4) (1977); N.C.Gen.Stat. § 15A-2000(f)(4) (Supp.1977), added by 1977 N.C.Sess. Laws, ch. 406; S.C. Code § 16-3-20(C)(b)(4) (Supp.1978); Tenn. Code Ann. § 39-2404(j)(5) (Supp.1977); Utah Code Ann. § 76-3-207(1)(f) (Supp.1977); Wash.Rev. Code § 9A.32.045(2)(d) (Supp.1977); Wyo.Stat. §§ 6-54.2(c), (d), and (j)(iv) (Supp.1977), added by 1977 Wyo.Sess. Laws, ch. 122.
The nine state statutes allowing consideration of any mitigating circumstance are Del. Code Ann., Tit. 11, § 4209(c) (Supp.1977); Ga. Code § 27-2534.1(b) (1975); Idaho Code § 19-2515(c) (Supp.1977); Ill.Rev.Stat., ch. 38, § 9-1(c) (Supp.1978); Miss. Code Ann. § 97-3-21 (Supp.1977), see *Jackson v. State*, 337 So.2d 1242, 1254 (Miss.1976); N.H.Rev.Stat.Ann. § 630:5(II) (Supp.1977); 21 Okl.Stat., Tit. 21, § 701.10 (Supp.1977); Tex.Code Crim.Proc. Ann., Art. 37.071(b)(2) (Vernon Supp.1978), see *Jurek v. Texas*, 428 U.S. 262, 272-273, 96 S.Ct. 2950, 2956-2957, 49 L.Ed.2d 929 (1976); Va. Code § 19.2-264.4(B) (Supp.1977).

End of Document

EXHIBIT 45

120 Nev. 1030
Supreme Court of Nevada.

The STATE of Nevada, Appellant,
v.
Cameron Scott CATANIO, Respondent.

No. 42628. | Dec. 29, 2004.

Synopsis

Background: After defendant was charged with three counts of lewdness with a minor, defendant filed a motion to dismiss the charges. The District Court, Second Judicial District, Washoe County, Steven R. Kosach, J., dismissed the charges against defendant. The State appealed.

[Holding:] The Supreme Court held that evidence was sufficient to establish probable cause to believe that defendant committed lewdness with a minor, despite lack of physical contact between defendant and victims.

Reversed.

West Headnotes (8)

[1] **Infants**
Enticement, luring, and inducement in general

Evidence was sufficient to establish probable cause to believe that defendant committed lewdness with a minor, even though defendant did not have physical contact with the victims; defendant offered the victims money to masturbate in his presence. West's NRSA 201.230.

1 Cases that cite this headnote

[2] **Criminal Law**
Review De Novo

Statutory interpretation is a question of law subject to de novo review.

11 Cases that cite this headnote

[3] **Statutes**
Plain language; plain, ordinary, common, or literal meaning

For the purpose of statutory interpretation, the Supreme Court must attribute the plain meaning to a statute that is not ambiguous.

15 Cases that cite this headnote

[4] **Statutes**
What constitutes ambiguity; how determined

For the purpose of statutory interpretation, an ambiguity arises where the statutory language lends itself to two or more reasonable interpretations.

13 Cases that cite this headnote

[5] **Statutes**
Intent

Legislative intent is the controlling factor in statutory construction.

3 Cases that cite this headnote

[6] **Statutes**
Purpose and intent; determination thereof

Statutes
Policy considerations; public policy

For the purpose of statutory interpretation, the Supreme Court looks to reason and public policy to discern legislative intent.

4 Cases that cite this headnote

[7] **Criminal Law**
Liberal or strict construction; rule of lenity

When ambiguous, criminal statutes must be strictly construed and resolved in favor of the defendant.

1 Cases that cite this headnote

[8] **Infants**

Indecency and indecent liberties in general

Statute prohibiting lewdness with a minor, which addresses acts "upon or with the body ... of a child," does not require any physical contact between the perpetrator and the minor; language providing that an act may be committed "with" the minor's body indicates that the minor's body is the object of attention, and a perpetrator who threatens, coerces, or otherwise instigates a lewd act but has no physical contact with the victim may thus satisfy the elements of the statute. West's NRSA 201.230, subd. 1.

1 Cases that cite this headnote

Attorneys and Law Firms

****589** Brian Sandoval, Attorney General, Carson City; Richard A. Gammick, District Attorney, and Gary H. Hatlestad, Deputy District Attorney, Washoe County, for Appellant.

Law Offices of John E. Oakes and John E. Oakes and Justin E. Oakes, Reno, for Respondent.

Before BECKER, AGOSTI and GIBBONS, JJ.

Opinion

1031** ***OPINION

PER CURIAM.

FACTS

This is the State's appeal from a district court order granting respondent Cameron Catanio's motion to dismiss three counts of lewdness with a minor based on a determination that the State failed to present sufficient evidence for the required finding of probable cause at the grand jury proceedings. [1] The district court concluded that Catanio's conduct did not satisfy all of the essential elements of lewdness with a minor. We disagree and therefore reverse.

Catanio worked as a teacher's aide for special education students and as a volunteer assistant track coach at a middle school in Reno, ***1032** Nevada. During the fall of 2002, Catanio befriended three 13–year–old boys at the school and began giving the boys candy on a daily basis. Over time, Catanio's gifts became more elaborate, personal and inappropriate. His gifts included a video game system and games, air pistols, ammunition, protective gear, pornographic materials, handcuffs and condoms.

In December 2002, after a snowball fight with the three boys, Catanio offered the boys cash, which he never paid, if the boys would ****590** masturbate behind some bushes. Two of the boys went behind some bushes and did so while Catanio watched their backs from his parked car. A few days later, Catanio bought a cellular phone for one of the boys; they used the phone for late night conversations in which they discussed sex and masturbation. In two different instances, two of the boys separately snuck out of their houses and met Catanio. On each occasion, Catanio took the minor to his apartment and gave him alcohol, played pornographic videos for him, gave him a condom and invited him to masturbate.

During an interview with the Washoe County School District police, Catanio admitted that he had an erection when he watched the boys masturbate behind the bushes. He also admitted becoming sexually aroused on the two occasions when each boy masturbated in his apartment and that he masturbated himself each time after taking each boy home. At no time did Catanio have any physical contact with any of the boys.

In dismissing the lewdness counts against Catanio, the district court determined that, after accepting the facts established before the grand jury as true, Catanio did not commit a criminal act or acts. The district court concluded that NRS 201.230, which criminalizes lewdness with a child under 14 years, requires proof of physical contact between the accused and the victim.

The State now appeals from the order dismissing the lewdness charges. The question we are asked to resolve is whether the lewdness statute requires the State to prove that physical contact occurred between Catanio and the victims named in the complaint. We conclude that the statute does not require physical contact, and therefore, we reverse the district court's order and remand for further proceedings.

DISCUSSION

[1] The State argues that a physical touching is not an essential element of lewdness with a minor under NRS 201.230. The State points out that the California lewdness statute, which closely resembles Nevada's statute,[2] has been interpreted to require only that ***1033** the accused act to instigate or encourage a touching. The necessary touching may be by the child upon himself or herself at the perpetrator's urging.

[2] [3] [4] [5] [6] [7] Statutory interpretation is a question of law subject to de novo review.[3] We must attribute the plain meaning to a statute that is not ambiguous.[4] An ambiguity arises where the statutory language lends itself to two or more reasonable interpretations.[5] Legislative intent is the controlling factor in statutory construction.[6] We look to reason and public policy to discern legislative intent.[7] Finally, when ambiguous, "[c]riminal statutes must be 'strictly construed and resolved in favor of the defendant.' "[8]

[8] To determine whether a statute's language is ambiguous, we must examine it. NRS 201.230(1) defines lewdness with a child under 14 years:

> A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of ****591** that child, is guilty of lewdness with a child.

We conclude that the language describing a lewd act committed "upon or with the body" of a child under 14 is unambiguous. Because "upon" means "on," that language requires that the lewd action be done on the body of the minor, that is, some kind of touching or physical contact is required. However, the statute states "upon or with." By using the disjunctive "or," the statute clearly indicates that "upon" and "with" have different meanings. An act committed "with" the minor's body indicates that the minor's ***1034** body is the object of attention, and that language does not require a physical touching by the accused. Rather, the perpetrator need only cause the child to perform a lewd act upon him or herself to satisfy the elements set forth in the statute. Common sense also dictates this conclusion. When a person invites another person to do an act by saying, "come to the movies *with* me" or "come outside to play *with* me" or "watch T.V. *with* me" or "I'd like to play ball *with* you," no physical contact is necessarily intimated or required.

Considering our published opinions involving a charge of lewdness with a minor, we acknowledge that all but one involve a physical touching.[9] In two cases, the touchings were as minimal as ***1035** pulling the victims' clothing aside to photograph them.[10] In one case, after pulling the victim's clothing aside and photographing her, the defendant masturbated in front of the victim.[11] In *Houtz v. State*, however, the perpetrator did not touch the victim.[12] Rather, he provided alcohol and pornographic materials to the victim and ordered the victim to masturbate, and if the ****592** victim refused, threatened to tear his penis off. The perpetrator also masturbated. The defendant entered a plea of nolo contendere to one count of lewdness with a minor and was adjudged guilty based upon his plea. The issue in his appeal was not whether a touching had occurred but whether the statute of limitations had expired.[13] That the element of a lewd act "upon or with" the body of the victim was satisfied was not challenged. Nevertheless, *Houtz* demonstrates that the district court had determined that coercing a child to masturbate under threat of pain and masturbating in the child's presence were sufficient to satisfy the elements of lewdness with a minor.

In *Summers v. Sheriff*, the appellant contended that insufficient evidence was shown to bind him over for trial on a charge of lewdness with a minor.[14] The preliminary hearing evidence showed that the appellant had lowered the victim's bathing suit to her knees and photographed her, then masturbated in front of her. The appellant argued that the lack of physical contact between himself and the victim precluded the charge.[15] We held that physical contact occurred when the appellant touched the victim by lowering her bathing suit.[16] Because it was unnecessary to do so in order to decide that case, we declined to reach the issue of whether actual physical contact was a required element of the crime of lewdness with a minor.[17]

Our decision in *Summers* is similar to the California case that set the precedent there that the accused merely needs to instigate the touching. In *People v. Austin*, the defendant,

threatening the victim with a knife, pushed and guided the victim to an orchard and then told her that, if she pulled down her pants, he would give her some ***1036** money.[18] The child complied, and the perpetrator gave her a dollar. The California Fifth District Court of Appeal held that the defendant's conduct satisfied the essential elements of lewdness with a minor both when he pushed the child toward the orchard and when, at his instigation, the child removed her pants, as she necessarily had to touch herself to do so.[19]

Similarly, in *People v. Meacham,* the California Second District Court of Appeal held that instructing children to touch themselves satisfied the elements of lewdness with a minor so long as the perpetrator had the requisite specific intent.[20] The court noted that the evidence showing that the appellant's instructions to the victims to position their hands upon their own genitalia was "imputable to appellant as if the touching had been actually done by his own hands."[21]

We agree with the California courts' interpretation of what must be proven to establish the elements of the crime of lewdness. We further conclude that the Nevada statutory language providing that a lewd act be done "upon or with" a child's body clearly requires specific intent by the perpetrator to encourage or compel a lewd act in order to gratify the accused's sexual desires, but does not require physical contact between the perpetrator and the victim. Thus, a perpetrator who threatens, coerces or otherwise instigates a lewd act but has no physical contact with the victim may nevertheless satisfy the elements of NRS 201.230.

In this case, Catanio had no physical contact with the boys. Catanio offered the boys money to masturbate in his presence and brought two of the boys separately to his apartment where he gave them alcohol, played pornographic videos and invited the boys to masturbate. Therefore, accepting as true the evidence offered to the grand jury, ****593** we conclude that the State presented sufficient evidence to establish probable cause to believe that Catanio committed lewdness with a minor.

Accordingly, we conclude that the district court erred by dismissing the charges of lewdness with a minor because Catanio never touched any of the boys. Therefore, we reverse the district court's order and remand for further proceedings.

Parallel Citations

102 P.3d 588

Footnotes

1 The other counts are not at issue.

2 *See* Cal.Penal Code § 288(a) (West 1999) (stating that "[a]ny person who willfully and lewdly commits any lewd or lascivious act ... upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony").

3 *Firestone v. State,* 120 Nev. 13, 16, 83 P.3d 279, 281 (2004).

4 *Id.*

5 *Robert E. v. Justice Court,* 99 Nev. 443, 445, 664 P.2d 957, 959 (1983).

6 *Id.*

7 *Id.*

8 *Firestone,* 120 Nev. at 16, 83 P.3d at 281 (quoting *Anderson v. State,* 95 Nev. 625, 629, 600 P.2d 241, 243 (1979)); *see also Villanueva v. State,* 117 Nev. 664, 670 n. 13, 27 P.3d 443, 447 n. 13 (2001) (noting that "the rule of lenity does not apply where statutory language is unequivocal and there is no ambiguity to resolve").

9 *See, e.g., Crowley v. State,* 120 Nev. 30, 31–32, 83 P.3d 282, 284 (2004) (defendant rubbed male victim's penis outside of clothing and performed fellatio on victim, and fondled female victim's breasts and vagina); *Ramirez v. State,* 114 Nev. 550, 553, 958 P.2d 724, 726 (1998) (defendant touched victim on her genitals); *Scott E., a Minor v. State,* 113 Nev. 234, 236, 931 P.2d 1370, 1371 (1997) (defendant allegedly touched victim's vaginal area and had victim touch his exposed penis); *Griego v. State,* 111 Nev. 444, 448, 893 P.2d 995, 998 (1995) (defendant fondled child victim), *abrogated on other grounds by Koerschner v. State,* 116 Nev. 1111, 1116, 13 P.3d 451, 455 (2000); *Carroll v. State,* 111 Nev. 371, 372, 892 P.2d 586, 587 (1995) (defendant fondled victim's legs, thighs and vaginal area); *State v. Purcell,* 110 Nev. 1389, 1391, 887 P.2d 276, 277 (1994) (defendant allegedly fondled victim's breasts and buttocks); *Taylor v. State,* 109 Nev. 849, 850, 858 P.2d 843, 844 (1993) (defendant touched victim between her legs as she sat on his lap); *Keeney v. State,* 109 Nev. 220, 223, 850 P.2d 311, 313 (1993) (defendant touched victim's " 'private spot' " with his tongue), *overruled on other grounds by Koerschner,* 116 Nev. at 1116, 13 P.3d at 455; *Sterling v. State,* 108 Nev. 391, 393, 834 P.2d 400, 401

(1992) (defendant engaged in sexual acts with victim); *Walstrom v. State*, 104 Nev. 51, 52, 752 P.2d 225, 226 (1988) (slides revealed defendant engaged in lewd acts with child), *overruled in part on other grounds by Hubbard v. State*, 112 Nev. 946, 948, 920 P.2d 991, 993 (1996); *Passama v. State*, 103 Nev. 212, 216, 735 P.2d 321, 324 (1987) (defendant confessed through coercion to touching victims' vaginas); *Sheriff v. Frank*, 103 Nev. 160, 162, 734 P.2d 1241, 1242 (1987) (defendant allegedly touched victim's chest and genitals); *Meador v. State*, 101 Nev. 765, 767, 711 P.2d 852, 853–54 (1985) (defendant pulled girls' nightshirts up to photograph them); *Sheriff v. Miley*, 99 Nev. 377, 379–80, 663 P.2d 343, 344 (1983) (defendant attacked and possibly sexually penetrated victim); *Meyer v. State*, 95 Nev. 885, 886, 603 P.2d 1066, 1066 (1979) (defendant allegedly forced child to perform fellatio), *overruled by Little v. Warden*, 117 Nev. 845, 851, 34 P.3d 540, 544 (2001); *Maes v. Sheriff*, 94 Nev. 715, 716, 582 P.2d 793, 794 (1978) (defendant forced victim to fondle defendant's genitals and licked victim's penis and groin); *Findley v. State*, 94 Nev. 212, 214, 577 P.2d 867, 867 (1978) (defendant placed hand on victim's genitals), *overruled by Braunstein v. State*, 118 Nev. 68, 75, 40 P.3d 413, 418 (2002); *Green v. State*, 94 Nev. 176, 177–78, 576 P.2d 1123, 1124 (1978) (defendant rolled victim's shirt up); *Summers v. Sheriff*, 90 Nev. 180, 181, 521 P.2d 1228, 1228 (1974) (defendant allegedly pulled victim's bottoms down, photographed her and masturbated in front of her); *Sheriff v. Dearing*, 89 Nev. 255, 255, 510 P.2d 874, 874 (1973) (defendant allegedly performed cunnilingus on victim); *Martin v. Sheriff*, 88 Nev. 303, 305, 496 P.2d 754, 755 (1972) (defendant allegedly inserted penis into victim); *Farrell v. State*, 83 Nev. 1, 2, 421 P.2d 948, 948 (1967) (defendant allegedly touched victim inside her panties).

10 *Meador*, 101 Nev. at 767, 711 P.2d at 853–54; *Summers*, 90 Nev. at 181, 521 P.2d at 1228.

11 *Summers*, 90 Nev. at 181, 521 P.2d at 1228.

12 111 Nev. 457, 893 P.2d 355 (1995); *see also Townsend v. State*, 103 Nev. 113, 120, 734 P.2d 705, 710 (1987) (one count of lewdness with a minor was based on defendant masturbating in front of victim and second count was based on defendant fondling victim).

13 *Houtz*, 111 Nev. at 461, 893 P.2d at 357.

14 90 Nev. at 182, 521 P.2d at 1229.

15 *Id.*

16 *Id.*

17 *Id.*

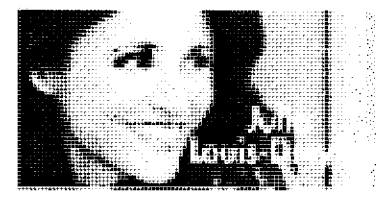
18 111 Cal.App.3d 110, 168 Cal.Rptr. 401, 402 (1980).

19 *Id.* at 403.

20 152 Cal.App.3d 142, 199 Cal.Rptr. 586, 593 (1984), *abrogated on other grounds by People v. Brown*, 8 Cal.4th 746, 35 Cal.Rptr.2d 407, 883 P.2d 949, 959 (1994).

21 *Id.* at 594.

EXHIBIT 46



July 1, 2011

Danish Company Blocks Sale of Drug for U.S. Executions

By **DAVID JOLLY**

PARIS — A Danish pharmaceutical company said Friday that it would stop shipping a powerful drug to American prisons that carry out the death penalty by lethal injection because some states began using it as a substitute for another compound that was taken off the market.

The company, Lundbeck, said in a statement that it "adamantly opposes the distressing misuse of our product in capital punishment." Lundbeck informed its distributors that from now on its sodium pentobarbital injection, a barbiturate sold under the brand name Nembutal, would be available in states that conduct lethal-injection executions on only a restricted basis.

"After much consideration, we have determined that a restricted distribution system is the most meaningful means through which we can restrict the misuse of Nembutal," Ulf Wiinberg, Lundbeck's chief executive, said in the statement. "While the company has never sold the product directly to prisons and therefore can't make guarantees, we are confident that our new distribution program will play a substantial role in restricting prisons' access to Nembutal for misuse as part of lethal injection."

The death penalty is prohibited throughout the 27-member European Union, and human rights groups have brought pressure on drugmakers not to supply lethal drugs for American executions.

In execution by lethal drugs, a prisoner is injected with one or more drugs, which can include anesthetics, barbiturates and muscle relaxants.

Lundbeck's decision applies to prisons in 14 states, said Mads Kronborg, a company spokesman. It follows moves by states including Mississippi, Ohio, Oklahoma and Texas, to use the drug for executions. States began using pentobarbital as a substitute for the

anesthetic sodium thiopental when that drug's only American producer, Hospira Inc. of Lake Forest, Ill., announced in January that it would stop selling the drug.

Reprieve, a human rights group in London that has led in the movement to stop European companies from selling lethal injection drugs to the United States, said pentobarbital had been used to execute 18 prisoners.

"We also need to see action from the European Commission to block the export of execution drugs from the E.U. to the U.S.," a Reprieve spokeswoman, Maya Foa, said in a statement. "Several European firms have already become involved in this grim business on their watch — this must not be allowed to happen again."

While pentobarbital is an old drug, vulnerable to competition from generics, Nembutal is currently the only version available in the United States that can be injected, Mr. Kronborg said.

"We would have withdrawn it from the market," he said. "Strategically, financially it's completely insignificant to us.

"But experts said it was important to have it available for therapeutic use," including as an emergency treatment of severe epilepsy and as a strong sedative, he added.

Lundbeck said it would review orders before providing clearance for shipping the drug and deny orders from prisons located in states currently carrying out executions. Purchasers must give written agreement that they will not redistribute the drug. Previously, distributors were required only to ensure that a buyer had the necessary licenses for ordering controlled substances.

"We were completely shocked and outraged" to learn that the drug was being used for executions, Mr. Kronborg said. "States and prisons never asked. We only found about it from the media. If they had asked, we would have said no."

EXHIBIT 47

The New York Times

August 18, 2013

Death Row Improvises, Lacking Lethal Mix

By **RICK LYMAN**

The decision by the Missouri Supreme Court to allow propofol, the same powerful anesthetic that caused the death of Michael Jackson, to be used in executions — coming at a time when Texas, Ohio, Arkansas and other states are scrambling to come up with a new drug for their own lethal injections — is raising new questions about how the death penalty will be carried out.

"The bottom line is no matter what drugs they come up with, despite every avenue these states have pursued, every drug they have investigated has met a dead end," said Deborah Denno, a professor at Fordham Law School who studies execution methods and the death penalty. "This affects every single execution in the country. It just stalls everything, stalls the process."

With manufacturers now refusing to supply corrections departments with the drugs they had been using for executions, some states, like Georgia, have been resorting to obtaining drugs from compounding pharmacies — specialty drugmakers — which death penalty opponents say lack the proper quality control. Other states, as they run low on their old stock of drugs and are unable to replace them, are turning to new, untried methods like propofol or simply announcing that they are searching for a solution.

In the beginning, it was relatively simple and uniform. Several dozen states adopted the three-drug cocktail for executions first used by Texas three decades ago — a sedative (usually sodium thiopental) was mixed with a paralytic agent (pancuronium bromide) followed by a drug inducing cardiac arrest (potassium chloride). The idea was to provide a quick, painless method to replace the electric chair, gas chamber and firing squad.

But a shortage of pancuronium bromide a few years ago led some states to switch to a single-drug method, often simply administering enough sodium thiopental to cause death. The manufacturer of that drug, however, the Illinois-based Hospira, stopped providing it to corrections departments after workers at its Italian plant, and European officials, objected to the use of the drug for executions.

Many state corrections departments switched to pentobarbital, another powerful sedative, in their three-drug cocktail. But when its manufacturer, the Danish-based Lundbeck, learned that its product was being used in death penalty cases, it refused to sell any more to corrections departments and insisted that its American distributors also refuse to supply the drug.

Then, just last month, a federal judge in Washington ruled that sodium thiopental could not be imported into the country at all, because it had never been approved by the federal Food and Drug Administration. (It had been introduced before such F.D.A. approvals began.)

This has left states unsure of what to do when their stockpiles run out — use some other drug like propofol, buy versions of sodium thiopental or pentobarbital from a compounding pharmacy, or abandon lethal injections altogether and return to some other form of capital punishment.

"It's an artificially created problem," said Kent Scheidegger, legal director of the Criminal Justice Legal Foundation, which supports the death penalty. "There is no difficulty in using a sedative such as pentobarbital. It's done every day in animal shelters throughout the country. But what we have is a conspiracy to choke off capital punishment by limiting the availability of drugs."

The issue is expected to come to a head soon. Both Texas, the state with the busiest death house, and Ohio have said they would introduce a new lethal injection protocol in the next couple of months. Officials in both of those states have said in court filings that they would run out of their stockpiles in September.

"Corrections departments often buy a year's supply of the drugs they use, but it has a shelf life and it's expiring," said Richard C. Dieter, the executive director of the Death Penalty Information Center. "I think we are about to have some new breakthroughs on what the states are using. A lot of them will probably follow whatever Texas decides to do."

On Wednesday, the Missouri Supreme Court decided to allow executions using propofol to move ahead in October and November. There is no question that it would kill, but since it has never been used in an execution, death penalty opponents say, there is no way to say how much pain might be involved or what dose should be administered.

Arkansas had announced that it would use pentobarbital in its executions, but when that drug became unavailable, the governor refused to schedule any more executions until the state came up with a substitute — which has not happened.

California also announced, in June, that it would abandon the use of a three-drug cocktail and is studying what to replace it with.

"This drug issue is a temporary problem that is entirely fixable," Mr. Scheidegger said. "It is not a long-term impediment to the resumption of capital punishment."

Death penalty opponents, however, feel that the rejection of one drug after another will inevitably limit capital punishment.

Executions in the United States reached their height in 1999, when 98 people were put to death.

Since then, there has been a slow, steady drop in both the number of executions and the number of people being given the death penalty — in part because the rapid growth of life-without-parole sentences has given prosecutors a powerful plea-bargaining tool.

There were 43 executions in the United States in 2012, Mr. Dieter said, and a slightly lower number — 30 to 40 — is expected this year.

At the same time, six states — Connecticut, Illinois, Maryland, New Jersey, New Mexico and New York — have abandoned the death penalty in recent years.

Still, some 3,125 inmates were on death row in the United States as of January, including a handful in those states that have recently abandoned the death penalty. And advocates on both sides of the question say that public opinion polls continue to show strong public support for capital punishment.

"This issue of the drugs is just a way to stop things or slow them down," said Robert Blecker, a professor of criminal law at New York Law School and a death penalty supporter. "It's an abolitionist tactic to gum up the works. I know why they're doing it. From their perspective, every death delayed is a day in favor of abolition. It's just another tactic."

This article has been revised to reflect the following correction:

Correction: August 23, 2013

An article on Monday about drugs used for executions described incorrectly regulations on pharmacies that are specialty drugmakers. While these so-called compounding pharmacies are not covered by federal drug regulations, as are major drug manufacturers, they must still abide by state regulations governing all pharmacies; they are not "unregulated." The article also erroneously included one state among those that have voted in the past six years to abandon the

death penalty. New York is not one that has done so. (New York's statute was ruled unconstitutional in 2004, and lawmakers have not offered a new law.)

EXHIBIT 48

LAS VEGAS SUN

Door to clang shut on ancient state prison

By Cy Ryan (contact)

Saturday, May 14, 2011 | 2:17 p.m.

CARSON CITY – The ancient Nevada State Prison, initially opened when Abraham Lincoln was president, is finally going to close.

The Senate Finance Committee and the Assembly Ways and Means Committee voted Saturday to phase out the Carson City facility by April 2012 at a savings of more than $17 million.

Most of the 682 inmates will be transferred to the High Desert State Prison in Clark County, along with 59 staff.

Gov Brian Sandoval proposed in his budget the closure by Oct. 31 this year, but the budget committees, on the recommendation of Senate Majority Leader Steven Horsford, D-Las Vegas, delayed the phase out.

Horsford said more time was needed to plan the transfer and this would give the officers who are losing their jobs more time to find other employment. And those who are being transferred to High Desert will have more time to re-locate.

The prison, one of the oldest in the United States, was a hotel when purchased by the state in 1862. It burned in 1867 and was rebuilt.

There will be 105 positions eliminated by the closure. But Greg Cox, acting director of the state Department of Corrections, said some of those jobs have been kept vacant.

He said only about 30 officers would lose their jobs. Almost all the officers will retain their employment if they want to move to Las Vegas or other prisons.

Horsford, chairman of the Senate Finance, got assurance from Cox that there were no plans for building a new prison or for expanded facilities.

Assemblyman Tom Grady, R-Yerington, complained the former corrections director didn't do any maintenance on the state prison. He said he would not support closure because so many people are affected.

The joint committees voted down the recommendation of Gov. Sandoval. And there was applause from prison employees in the audience.

But then Sandoval offered the plan to keep it open six months longer than the recommendation and that passed.

While the prison will be closed, the inmate license plate factory and the print shop/book bindery operation will be kept open with inmates housed at the nearby Stewart facility.

The state's only execution chamber is located at the prison. The correctional department said it would open the chamber if an execution was necessary. The last execution was in April 2006.

Cox told the joint committees that the 712-bed state prison in Jean in Clark County, shut down some three years ago, remains closed. He said some other states and prison industry have looked at taking it over but they wanted a facility with 1,200 to 1,500 beds.

The committees also voted to shut down the 150-bed honor camp at Wells. Sandoval initially recommended its closure but then pumped more than $2 million to keep it open.

Inmates in the camp are used to battle range fires in northeast Nevada and they chop wood and clean snow on the sidewalks of senior citizens during the winter months.

The Wells camp will also be phased out, closing in June 2012.

The committees followed the recommendation of the governor to eliminate swing-shift differential pay for prison officers. These employees receive 5 percent extra if they work four hours between 6 p.m. and 7 a.m.

The committees, however, rejected the recommendations of the governor to eliminate extra pay for working in rural prisons in Lovelock and Ely and a mileage differential for working at Indian Springs which is 25 miles outside metropolitan Las Vegas.

Most Popular
Viewed
Discussed
Trending
Sinatra's old Lake Tahoe resort to get major makeover
Openings and closings: More mall shopping, fewer dining options
Jerry Tarkanian, now a Hall of Famer, still a fighter
In a stagnant economy, real estate agents turn back to the basics