

DEATH PENALTY STUDY GUIDE
THE LEAGUE OF WOMEN VOTERS OF NEW MEXICO

INTRODUCTION

At the LWVNM Convention in May 2005 the delegates voted to conduct a study of the death penalty. LWVUS social policy states, "Secure equal rights and equal opportunity for all. Promote social and economic justice and the health and safety of all Americans." The purpose of the study is to ascertain whether that policy is upheld by the implementation of the death penalty in New Mexico and across the country. Specific issues include fairness, deterrence, cost, and possible alternatives.

FACTS CONCERNING THE NM DEATH PENALTY

- Capital Offenses: First Degree Murder (Section 30-2-1 A, NMSA)
- Who Decides Sentence: Jury
- Minimum Age to Receive the Death Penalty: 18
- Execution of the Mentally Retarded: Forbidden
- Death Row Location: NM State Penitentiary, Santa Fe
- Method of Execution: Lethal injection
- Does New Mexico Have Life Without Parole: No
- Clemency Process: The Governor has the exclusive authority to grant clemency.
- Current Death Row Inmates: Timothy Allen and Robert Fry

Current Overview

Twelve states plus Puerto Rico and the District of Columbia do not have a death penalty: Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia and Wisconsin. The Federal Government, the U.S. Military and the other 38 states have the death penalty as a punishment option although they do not agree on the eligible crimes or whether insanity or other circumstances may prevent execution. In 2004 the high courts of Kansas and New York struck down the death penalty statutes in their states as unconstitutional and by mid-2005, those legislatures have yet to reinstate them. The Supreme Court, in *Atkins v. Georgia*, ended the execution of the mentally retarded in 2002. In *Roper v. Simmons* the Court ended the execution of juveniles in 2005. (From the Death Penalty Information Center, or DPIC)

The use of the death penalty has declined in recent years, with executions and death sentences lower than a few years ago. Executions dropped from 71 in 2002 to 59 in 2004. The number of new death sentences has declined from 232 in 2000 to 125 in 2004. In the late 1990s the average was about 300 per year. Oklahoma has the highest per capita execution rate in the country. Most executions have taken place in 10 southern states; in 2004 the South was responsible for 85% of the executions. (DPIC)

HISTORY

In 1972 the Supreme Court, in *Furman v. Georgia*, invalidated hundreds of scheduled executions, declaring that the state laws were applied in an "arbitrary and capricious" manner and thus violated the Eighth Amendment's prohibition against cruel and unusual punishment, and the Fourteenth Amendment guarantees of equal protection of the laws and due process. New Mexico responded to *Furman* by making the death penalty the mandatory sentence for all persons convicted of first-degree murder. However, the new law was rendered unconstitutional by a Supreme Court ruling that mandatory death sentences violated the Eighth Amendment. The Court reinstated the death penalty in *Gregg v. Georgia* (1976), ruling that the penalty "does not invariably violate the Constitution" if administered in a manner designed to guard against arbitrariness and discrimination. In response several states, including New Mexico, promptly passed or reenacted capital punishment laws. (State Bar of NM Task Force Report)

New Mexico achieved statehood in 1912 and over the next 21 years 19 men were executed by hanging in the county in which the crime was committed. Since 1929 all executions have been carried out in the State Penitentiary at Santa Fe. The means has changed from electrocution to gas to lethal injection. There has not been strong support for the use of capital punishment in the state. In 1986, the outgoing Governor, Toney Anaya, commuted the death sentences of five men to life imprisonment. In the same year Terry Clark pled guilty to murdering Dena Lynn Gore. He reportedly believed he would receive the clemency granted to all death row inmates that year. However, a local judge delayed sentencing until after Anaya had left office. When Clark was put to death on November 6, 2001, a period of 41 years had elapsed since the previous execution. (Allan; Mentor)

In 1994 Gary Johnson, who had campaigned as a "tough on crime" candidate, was elected Governor of New Mexico. Initially Johnson sought to limit death row appeals, believing that certainty of punishment would act as a deterrent. His bills did not pass and gradually his views changed. Johnson still thought that "swift and sure punishment deters crime," but feared that a limit on appeals might lead to the execution of innocent people. He said, "Those opposed to the death penalty point out the disparities that exist with regard to individuals receiving the death penalty sentence. They argue persuasively that these disparities are a result of several factors including prosecutorial discretion as well as racial and economic discrimination." In 2002 Johnson placed the repeal of the death penalty on the legislative agenda; however, the session was limited to budget-related issues and no action was taken. (Mentor)

In 2005 Representative Gail Beam introduced House Bill 576, a bill to abolish the penalty of death for persons convicted of a capital felony and substitute the penalty of punishment by death with a sentence of life imprisonment without possibility of release or parole. The bill passed in the House (38 to 31). It was opposed by Governor Richardson and died in the Senate.

CURRENT NM LAW

The sentence of capital punishment may be imposed only for cases of first-degree murder with at least one statutory aggravating factor. Unlike all other criminal cases in the state,

the jury rather than the judge determines the sentence in a second trial following conviction. To obtain the death penalty, the prosecution must prove to the jury the existence of at least one of the statutory aggravating factors:

- A. the murder victim was a peace officer who was acting in the lawful discharge of an official duty;
- B. the murder was committed with intent to kill in the commission of or attempt to commit kidnapping, criminal sexual contact of a minor or criminal sexual penetration;
- C. the murder was committed with the intent to kill by the defendant while attempting to escape from a NM penal institution;
- D. while incarcerated in a NM penal institution in New Mexico, the defendant, with the intent to kill, murdered a person who was at the time incarcerated in or lawfully on the premises;
- E. while incarcerated in a NM penal institution, the defendant, with the intent to kill, murdered an employee of the corrections and criminal rehabilitation department;
- F. the capital felony was committed for hire; and
- G. the capital felony was murder of a witness to a crime or any person likely to become a witness to a crime, for the purpose of preventing report of the crime or testimony in any criminal proceeding, or for retaliation for the victim having testified in any criminal proceeding.

The New Mexico Supreme Court is required to automatically review all judgments of conviction and sentences of death. The state legislature has stated that the death penalty, shall not be imposed if:

- (1) the evidence does not support the finding of a statutory aggravating circumstance;
- (2) the evidence supports a finding that the mitigating circumstances outweigh the aggravating circumstances;
- (3) the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; or
- (4) the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. NMSA 1978, Section 31-20A-4(C) (1979).

After conviction and imposition of the death penalty, and the NM Supreme Court's affirmative review, a capital case returns to the district court for post-conviction review. In its 2004 report the NM State Bar Task Force stressed that this proceeding is critical to assuring that the defendant has received effective assistance of counsel and otherwise has not had his constitutional rights violated in the imposition of the death penalty. Formerly the federal courts provided a higher forum for the examination of death penalty convictions, but the 1996 Antiterrorism And Effective Death Penalty Act limits the time frame in which a petitioner may file a habeas petition and restricts the scope of the federal review.

DEATH PENALTY PROS AND CONS

Deterrence

Deterrence is a primary reason given to support the retention of the death penalty. Supporters argue that if the death penalty deters one criminal from committing murder, the penalty serves its purpose. To bolster the argument, proponents cite two comprehensive studies published in 2002 and 2003 that found capital punishment to be a significant deterrent of homicides in the United States.

The 2002 study was conducted by members of the Economics Department at the University of Colorado at Denver, using 6,143 death sentences between 1977-1997 in the US to investigate the impact of capital punishment on homicide. The study compared the changes in the states' murder rates to the probability of being executed for murder. The authors found not only that each execution has a significant deterrent effect, but also that each commutation of a death sentence increases the number of homicides committed.

Researchers at Emory University conducted the 2003 study, and their results also suggest that capital punishment has a strong deterrent effect. They found that an increase in any of three possibilities – arrest, sentencing, or execution – tends to reduce the murder rate. In particular, each execution results, on average, in 18 fewer murders – with a margin of error of plus or minus 10. This study also controlled for the effect of other factors on murder rates, including age, race, unemployment, population density, other crime rates, and police-and prison-related variables. (LWV Ohio Study)

Proponents of the death penalty conclude that the deterrent effect is more accurately measured by tracking changes in murder rates over time in states with the penalty than by comparison with other states. The five states showing the greatest relative decline in murder rates for the years 1995-2002 compared to 1968-1976 – the years of no executions – are, in order, Georgia, South Carolina, Florida, Delaware, and Texas. Each of these States has aggressively enforced the death penalty since Furman. (LWV Ohio Study)

Murder rates in states with a death penalty are higher than in states without a death penalty. FBI Uniform Crime Statistics for 2003 show that the South, which accounts for over 80% of executions, had the highest murder rate, 6.9 per 100,000 people. The Northeast, with 1% of all executions, had the lowest murder rate, 4.2 per 100,000. States that have abolished or instituted capital punishment show no significant changes in either crime or murder rates. (DPIC)

Claims that each execution deters a certain number of murders have been discredited by social science research, according to Ted Goertzel, Professor of Sociology at Rutgers University (Goertzel). Goertzel and others argue that the death penalty has no deterrent effect on most murders because people commit murders largely in the heat of passion, and/or under the influence of alcohol or drugs, giving little thought to the possible consequences of their acts. Victor Streib, a respected authority on death penalty issues in America, points out that for the death penalty to be a deterrent, murderers would have to make a rational cost/benefit analysis of their actions prior to committing the homicide. "The deterrence principle assumes ...such things as (1) your knowledge of the death penalty's existence, (2) your belief that you will be caught and convicted for your acts, (3)

your calculation that you would be within the one percent of convicted killers who are actually executed, and (4) your engaging in this careful cost/benefit analysis before you pull the trigger." (LWV Ohio Study)

In 1994 Justice Blackmun wrote, "The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution." (Callins v Collins) To be a deterrent, the death penalty would have to be consistently and promptly used. Yet promptness in carrying out the death penalty is tantamount to abrogating a citizen's constitutional rights. Indeed, there is often an eight-to-ten year gap between conviction and execution. (LWV Ohio Study)

Finally, others argue that it is close to impossible to measure the effect of the death penalty as a deterrent. One has to hold all other conceivable causes of crime constant while varying only the expected penalty.

Accuracy of Verdicts

Errors in guilty verdicts are well documented. In 1974 New Mexico sentenced to death four innocent men, Thomas Gladis, Ronald Keine, Clarence Smith and Richard Greer, based on false witness testimony and police misconduct. They remained on death row for two years before being vindicated. Illinois governor and death penalty proponent George Ryan decided to halt executions because the system was "infected with error" in his state. Findings of innocence reached a high point in 2003 with 10 persons exonerated and freed from death row, the highest number since the reinstatement of the death penalty. 119 persons have been exonerated and released from death row since 1973, and the pace has been accelerating with the introduction of DNA testing. According to a Stanford Law Review study, at least 25 men are known to have been executed in the last century for crimes they did not commit. (LWV Maryland Study)

To deal with erroneous verdicts the Justice for All Act of 2004 created a DNA testing program and authorized grants to states for capital prosecution and capital defense improvement. Specifically, the act

- provides rules and procedures for federal inmates applying for DNA testing.
- creates the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program and authorizes \$25 million over five years to help states pay the cost of post-conviction DNA testing (Kirk Bloodsworth was the first death row inmate to be exonerated by DNA testing); and
- authorizes grants to states for capital prosecution and capital defense improvement that can be used to train, oversee, and improve the quality of death penalty trials, as well as assist families of murder victims.

This law was supported by legislators on both side of the death penalty question.

Opponents of capital punishment welcome the new legislation, but point out that it does not address all of the issues. Mistaken identity, police misconduct, prosecutorial misconduct, and false confessions are among the many other problems. In "A Broken System," a national study of death penalty cases from 1973 to 1995, Columbia University researchers found an overall error rate of 68% — or reversible errors in almost seven out

of every ten capital cases. Professor James Liebman, principal researcher, stated that factors in producing erroneous verdicts “include prosecutorial overcharging and overreaching, chronically incompetent defense counsel, weak supervision by trial judges, mis-instructed jurors, and expensive appeals by an overburdened review system .” (LWV Ohio Study)

The quality of the lawyers provided by the state for indigent defendants accounts for many death row case mistakes. According to the Death Penalty Information Center, complaints from inmates on death row about shoddy representation at trial did not garner much sympathy until the number of innocent people freed from death row became an embarrassment. Among the shocking examples have been unqualified lawyers, lawyers who fell asleep during the trial and lawyers who lacked the resources to prepare properly. Because simply establishing minimum standards for attorneys is not enough, fixing the quality of representation will be expensive. Consideration is needed of who makes the attorney appointments, how the standards are implemented, whether sufficient resources have been allotted, and whether representation is provided for the entire appeals process.

The high rate of reversible error in death penalty cases in Ohio highlights the potential for mistaken execution. Nearly 40% of Ohio’s death penalty cases have been overturned by the federal appeals court. Yet in 2003, Ohio was third in the country— behind Texas and Oklahoma— in executing people.

At least four Ohio death row inmates have ultimately been found innocent and released in the past 25 years because of prosecutorial and judicial misconduct. David Bodiker, Director of the Office of Ohio Public Defenders noted that, “Death penalty cases attract a lot of media interest. These are horrible homicides. The prosecutor and the police become heroes by bringing a person to justice. The cases become more than trials. They become crusades with the prosecutors’ political futures invested in it. But his job is not to win, but to do justice.”

A 1995 national random survey of police chiefs and county sheriffs found that 85 percent of responding chiefs thought that politicians in general supported the death penalty simply to indicate that they were tough on crime. (LWV Ohio Study)

Fairness

A number of developments in the last twenty years have contributed to renewed concern about the death penalty in the United States. Two particular problems have received significant attention: concern that the imposition of the death penalty is affected by race and a more general concern that the death penalty is imposed arbitrarily.

Race

In 1990 the U.S. General Accounting Office (GAO) reviewed and agreed with the many studies that, throughout the past quarter century, have found that race is a key factor in whether a death penalty is sought and whether it is imposed. Indeed, Amnesty International USA found that murderers of whites are about six times more likely to be executed than murderers of blacks, although about equal numbers of blacks and whites are homicide victims. Nationally, the majority of the 4,220 prisoners executed in the U.S. between 1930 and 1996 were black. Those executed have been almost exclusively guilty of murdering a white victim. Only 18% of those executed were convicted of murdering a

black person, despite the fact that blacks are victims in about 50% of U.S. murders. (LWV Ohio study)

Nine years later the American Bar Association, a group of 400,000 lawyers, reiterated its call for a moratorium on executions because of serious concern with racial disparity in death sentences and the failure to provide adequate counsel and resources to capital defendants. In January 2000 Republican Governor George Ryan called for a moratorium on executions in the state of Illinois, and in May 2002 Governor Paris Glendening did the same in Maryland. In January 2003 Governor Ryan pardoned four men and commuted the sentences of 167 death row inmates to life without parole or less because he found the death penalty process "arbitrary and capricious and therefore immoral." (LWV Maryland Study)

Statistics on race show that as of January 2003 there were 3,692 people on death rows in the US of which minorities (black, Hispanic, Native American and Asian) accounted for 2,030 or 55% of the people. (In NM the two men on death row are white, non-Hispanic.) From 1979, when the death penalty was reinstated, to January 1, 2003, fifteen men have been sentenced to death in NM. Seven of those men were persons of color: two were African-American, one was Native American and four were Hispanic.

Proponents of the death penalty argue that white murderers are twice as likely to be executed in the US as are black murderers and are executed, on average, 12 months more quickly than are black death row inmates. They point out that only capital murders, not all murders, are subject to a capital indictment. Generally, a capital murder is limited to murder plus secondary aggravating factors, such as murders involving burglary, carjacking, and rape. The proponents say that white victims are, overwhelmingly, the victims under those circumstances, in ratios nearly identical to the cases found on death row. Any other racial combinations of defendants and/or their victims in death penalty cases is a reflection of the crimes committed and not any racial bias within the system, as confirmed by studies from the Rand Corporation (1991), Smith College (1994), the University of Maryland (2002), New Jersey Supreme Court (2003). (DPINFO)

Arbitrariness

The second problem of fairness is whether the death penalty is imposed in an arbitrary manner. On the national level geography plays a role in determining whether a particular defendant will be sentenced to death. Among those states where the death penalty is a legal sentencing option, some are more likely to sentence defendants to death and to execute them than others. Nationally since 1976 the South has been responsible for 80% of the executions, while the Northeast has carried out less than 1%. (DPIC)

Another aspect of arbitrariness is the concern that socio-economic factors play a significant role in the imposition of the death penalty. A study commissioned by the Nebraska legislature and released in 2001 found that even when the crimes are similar, a defendant is four times more likely to receive the death penalty if the victim was wealthy than if the victim was poor.

A third factor is adequacy of representation. Justice Ruth Bader Ginsburg commented in 2001 that, "I have yet to see a death case among the dozens coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at

trial. ... [P]eople who are well represented at trial do not get the death penalty.” (LWV Ohio Study)

A task force convened by the NM State Bar in 2001-2004 to study the administration of the death penalty advised that the prosecution in NM be required to give notice of intent to seek the death sentence early in the case to save on the defense costs while enhancing the quality of the defense provided. They made many specific recommendations about qualifications, training, remuneration, and independence of defense counsel as well as recommendations for compensation of expert witnesses and other support. (Task Force Report)

The Task Force noted that the defense of capital cases puts unique strains on defense counsel. Counsel needs to spend more time with the defendant than in other types of felony cases. In order to effectively represent the defendant, counsel must build the type of relationship in which the defendant will feel able to disclose highly sensitive information such as a history of mental illness, mental retardation or sexual abuse. In a capital case disclosure of such evidence can differentiate the effective from the ineffective defense in the penalty phase. This is also important if there is a possibility that the prosecution will offer or accept a plea that will mean that the client is never released from prison. A client must trust his attorney utterly to make the gravest of decisions: whether to volunteer for a life in prison. Currently the standard for proving ineffective assistance of counsel is the same for a fourth degree felony as for a capital case. For a successful appeal the defendant must prove that his attorney is not competent and that his incompetence has affected the trial for a successful appeal. Trying to prove the effect of that which was not done presents an insurmountable burden.

The Task Force was also concerned with proportionality review, which is meant to answer the fundamental question posed by Justice White in *Furman*: is there a principled way to distinguish the few cases in which the death penalty is imposed from the many cases in which it is not? In other words, do similar defendants who commit similar crimes receive similar sentences?

The Task Force recommended written criteria to guide these decisions. They found that the characteristics of the victim appear to exert considerable influence on the decision to seek the death penalty in a particular case in New Mexico and that different district attorneys consider different criteria in determining whether to seek the death penalty in a particular case. The attitude of the particular district attorney towards the death penalty seems to be an important factor in determining whether a particular defendant faces capital punishment. The Task Force further recommends changes in trial practice, among which is the inclusion of jurors opposed to the death penalty in the murder trial and the creation of a data-bank on first-degree murder prosecutions by the State Supreme Court.

Cost

A 1993 Duke University study showed that the death penalty in North Carolina costs \$2.16 million more per execution than a non-death penalty murder trial. Research in other states indicates executions are three to six times more costly than life imprisonment. In 1999 the NM State Public Defender Department estimated the state would save \$1 to 2.5

million per year on Public Defender costs alone if the death penalty was replaced with an alternative sentence. (NM Coalition to Repeal the Death Penalty)

The New Mexico Corrections Department reports that because the medical costs for inmates increase substantially as inmates reach the end of their lives, repeal of the death penalty will create additional costs related to inmate care.

David Bodiker, Director of the Office of the Ohio Public Defender, reported that “[The cost of a death penalty defense] is so expensive that unless you’re in the top one percent of wage earners, you’re probably content to have a defense attorney appointed.” He estimates that four or fewer defendants of the 80 to 90 capital cases brought each year pay for private attorneys. The OPD reports, however, that private-pay attorneys are no more successful than appointed public-pay attorneys in preventing their defendants from being sentenced to death.

In addition, the caps on attorney fees (determined by each county’s commissioners) varied across Ohio counties from \$3,000 to \$50,000 per trial, total, for appointed defense counsel in 2001. Thus for capital cases that may involve a year and a half of pre-trial work and two or more weeks at trial, court-appointed defense attorneys typically end up being paid a low hourly fee. The low limits raise due process issues: Is there enough money allotted to provide for an adequate defense? Will qualified attorneys work for extremely low pay? Compounding the problem, the maximum amount allotted for expert witness fees (e.g., a mitigation expert, psychological and IQ testing) varies from county to county, but many counties do not make available what appointed defense attorneys regard as the minimum, \$10,000. As David Bodiker said, “[T]here is never enough public money for appointed attorneys to get the expert witnesses and mitigation experts they need.” (LWV Ohio Study)

Justice

Proponents of the death penalty cite the Bible and historical precedent to support the execution of murderers, believing that vengeance is a valid role for government. Their literature details the heinous crimes of death row convicts and the suffering of the surviving relatives of the victims.

Critics of the sentence reject the principle of an "eye for an eye." They believe that executions devalue human life. Their literature includes eye-witness descriptions of executions, including unsuccessful attempts. Recently they have promoted programs to help the families of victims with financial support.

Restorative justice is a process intended to create a more just society by creating opportunities for victims, offenders, and community members to meet to discuss the crime and its aftermath and by giving the offender an opportunity to make amends. One objective is to increase the awareness of the offenders of the impacts of their acts in order to lessen the likelihood of repetition. (Center for Restorative Justice)

Alternatives to the Death Penalty

Convicted murderers can be sentenced to lengthy prison terms, including life without parole, as they are in countries and states that have abolished the death penalty. Most

state laws allow life sentences for murder that severely limit or eliminate the possibility of parole.

Proponents of the death penalty cite the risk that a murderer, whether incarcerated, released, or escaped, may murder again. According to the 2002 Department of Justice Bulletin on Capital Punishment, for those death row inmates with available criminal history information, 64% had prior felony convictions, including 8% with prior homicide convictions. 40% of those inmates under a death sentence on December 31, 2002 had “active criminal justice status” at the time of the capital offense. Less than half were on parole; a quarter were on probation; and the remainder had charges pending, were incarcerated, had escaped or had some other criminal justice status. (LWV Ohio Study)

Advocates for the death penalty also direct attention to the rights of the victims, arguing that imposing the death penalty on the perpetrator provides a permanent, final resolution of the crime and provides the victims’ loved ones with the most secure closure. “In our understandable desire to be fair and to protect the rights of offenders in our criminal justice system, let us never ignore or minimize the rights of their victims. The death penalty is a necessary tool that reaffirms the sanctity of human life while assuring that convicted killers will never again prey upon others.” (LWV Ohio Study)

Opponents of the death penalty believe that restitution is more helpful to the victims’ families than vengeance and, in New Mexico, have promoted legislation to provide financial assistance to them.

STATE LEAGUE POSITIONS

Iowa

The League of Women Voters of Iowa opposes capital punishment and its reinstatement in Iowa.

- There is no conclusive evidence that capital punishment is a deterrent. There does not seem to be a correlation between the murder rate and the death penalty in those states that have it.
- The death penalty has a disproportionate impact on minorities and the poor and is enforced with prejudice.
- The death penalty is irreversible, and innocent people are known to have been executed in the past.
- The costs of execution are higher than those of life imprisonment without parole.
- Life imprisonment without parole is a sufficiently harsh sentence.
- It is morally untenable for the state to take a life. Institutionalized killing is inhumane and contributes to a climate of violence.

In the event capital punishment becomes law in Iowa:

- There should be a minimum age of 21 at which an offender is subject to the death penalty.
- Insanity and mental retardation should be considered mitigating factors.

- Special provisions should be made for the appointment of competent counsel in capital cases.
- There should be no restrictions placed on access to the appeals process.
- Guarantees should be in place to counteract the effects of prejudice, to provide for automatic review of evidence and trial procedures, and to ensure the penalty is appropriate for the offense.

Illinois

The League supports abolition of the death penalty in Illinois.

Kansas

The LWVK opposes a death penalty for the following reasons:

1. It is not a deterrent to others.
2. A guilty person may be acquitted because juries may be less willing to return a guilty verdict if the penalty is death.
3. An innocent person may be wrongfully convicted.
4. It is too costly to the state in terms of legal fees and court time.

Maryland

CAPITAL PUNISHMENT: (2005)

The League supports the abolition of the death penalty in Maryland.

For so long as Maryland has a death penalty, the League supports the following reforms for its equitable and consistent application.

1. uniform, statewide, criteria for death penalty prosecutions.
2. changing the standard of proof in weighing of aggravating and mitigating factors in sentencing from “preponderance of the evidence” to “beyond a reasonable doubt.”
3. requiring prosecutors to provide open file discovery and all favorable evidence to the defense, and to establish uniform internal guidelines for cases that are particularly subject to human error, such as those relying on eyewitnesses, co-defendants or jailhouse informants.
4. having mechanisms for preserving evidence such as DNA and for introducing newly discovered evidence.
5. requiring judges to explain to jurors life without parole as a sentencing option and to charge the jury to weigh mitigating factors.
6. effective defense including methods to screen, appoint and supervise lawyers representing defendants charged with capital crimes, adequate compensation for public defense counsel and sufficient funding to mount an effective defense.

Massachusetts (Testimony to the Joint Judiciary Committee)

The League of Women Voters of Massachusetts has steadfastly opposed the death penalty since 1985. The Governor's Council on Capital Punishment's report did not alter our position because capital punishment, in any form, is still decidedly unsound public policy.

Capital punishment has no deterrent value. Massachusetts, which has had no execution in 57 years, has one of the lowest murder rates in the country, while Texas, with frequent use of the death penalty, has one of the highest rates.

There is no error-free death penalty. An example from right here in Massachusetts: A government forensic pathologist in the case of Kristin Gilbert, the nurse at the Veterans Affairs Medical Center in Northampton who was convicted of murdering patients by injecting them with a heart stimulant, had to admit that his findings were wrong because he had made a mathematical error. Judge Michael A. Ponsor, the federal judge who presided at Gilbert's trial, has said that "The suggestion that it would be possible to construct a process for determining the appropriateness of capital punishment in particular cases that would be, over time, infallible or nearly infallible is not consistent with my experience."

Quoted in The Boston Globe on May 26, 2004, Judge Ponsor went on to say that mistakes "are not just possible; they are inevitable. Any policy decisions we make in this area must stand up in light of that human reality.... We should never lose sight of the fact that, as exquisite as our system of laws may be, it remains deeply, sometimes comically, human, with the fallibility of all things created by human beings."

The League agrees with Judge Ponsor. There is no need to kill in the name of the state in order to express our outrage and keep us safe. A life sentence without parole accomplishes both purposes.

Minnesota

The League of Women Voters of Minnesota supports abolition of the death penalty and opposes its reinstatement in Minnesota. Concurrence with the LWV of Illinois position was adopted at 2004 LWVMN Council.

New York

The League of Women Voters of New York State opposes the death penalty. We believe that New York State, as part of a civilized society in the 21st century, should not be executing people. Almost all developed countries have abolished the death penalty. The League joins in the call for abolition of the death penalty, with the use of life without parole as the primary alternative.

Should the legislature consider reestablishment of the death penalty, the League urges the creation of a state commission to study factors including, but not limited to, the following before a decision is made:

- Adequate mechanisms for introducing new evidence,
- Powers given to the county District Attorney in seeking the death penalty,

- Racial, ethnic and economic issues of defendants and victims (including data from other states),
- Geographic inequities in New York law,
- Costs of death penalty versus life in prison,
- Equitable justice for all defendants,
- Reliability of evidence in New York criminal convictions, and
- Human rights aspects of state killing.

If the New York State Legislature and Governor reestablish the death penalty statute, the League supports the exclusion of the following categories of people:

- Mentally ill,
- Developmentally disabled, and
- Under 18 years of age at the time of the crime.

The League further believes that any death penalty law should require proof of guilt “beyond any doubt,” rather than “beyond a reasonable doubt.”

Ohio

“While the League’s study took into account both pros and cons of capital punishment, after careful consideration at the grassroots level, members across the state expressed opposition to this form of punishment,” LWVO President Terry McCoy said. “Violations of due process, bias against minorities, quality of representation and cost led a large majority of members to the conclusion that the death penalty should be abolished in Ohio.”

The study also looked at the role of DNA testing, arguments for and against capital punishment as a deterrent to crime, public support for execution, victims’ rights and the appeals process. The study committee, appointed in the summer of 2003, included League members from across the state.

During the consensus process, members also voiced support for a statewide moratorium on the death penalty until a task force can look further into the matter. McCoy said that during such a moratorium, for example, the state could consider adequate mechanisms for introducing new evidence; racial, ethnic and economic issues of defendants and victims; geographic inequities; costs of death penalty versus life in prison; powers given to county district attorneys in seeking the death penalty; reliability of evidence; and human rights aspects.

Pennsylvania

Supports government action for a moratorium on the death penalty in Pennsylvania.

BACKGROUND: The LWV of Greater Pittsburgh, after a study of the present use of the death penalty in Pennsylvania, reached the conclusion that a moratorium should be imposed to provide the opportunity to assess the administration of capital punishment in PA, its fairness and consistency, the availability of adequate defense counsel, racial

equity, its use in cases of developmentally disabled and mentally ill defendants and its application to juveniles. The position supporting a moratorium was adopted by concurrence of other local Leagues in 2003.

Texas

Administration of Justice

Reform of the capital punishment system in Texas with the following measures

- prohibit the execution of the mentally retarded, mentally ill, and juveniles under the age of 18 at the time the crime was committed
- observe the provisions of the Vienna Convention by providing foreign nationals access to consular officials from their native countries
- require the Board of Pardons and Paroles to hold open meetings and to give explanations for its decisions
- establish a moratorium on all executions in Texas while an official study of the capital punishment system is conducted

BIBLIOGRAPHY

LWV studies of the Death Penalty

LWV of New York State

http://www.lwvny.org/League_Study/Death%20Penalty/death_penalty.htm

LWV of Ohio <http://www.lwvohio.org/>

Maryland LWV <http://www.lwvmd.org/el-directory.html>

LWV of Illinois http://www.lwvil.org/death_penalty/

The League of Women Voters Massachusetts <http://www.lwvma.org/>

Papers

State Bar of New Mexico Task Force to Study the Administration of the Death Penalty in New Mexico: Final Report (January 2004)

http://www.nmbar.org/Content/NavigationMenu/Publications_Media/Reports_Surveys/Report_on_the_Death_Penalty/TskfrDthPnltyRprt.pdf

Justice Blackmun <http://straylight.law.cornell.edu/supct/html/93-7054.ZA1.html>

Dissenting opinion in the 1994 decision of *Callins v. Collins* (510 U.S. 1141), explaining why the death penalty should be repealed.

Mentor, Kenneth. *The Death Penalty Returns to New Mexico* (2002).

http://cjstudents.com/nm_deathpen.htm History from 1972 to 2001 by a member of the Department of Criminal Justice at NMSU.

Allan, Mark. *Capital Punishment or Compassion: Executions in the State of New Mexico: The Death Penalty Since Territorial Days*

<http://www.angelo.edu/services/library/librarians/mallan/capital-punishment-nm.htm>

Discussion of the early history of the death penalty in NM by Mark Allan, Head of Reference at the Angelo State University Library.

Goertzel, Ted. *Capital Punishment and Homicide: Sociological Realities and Econometric Illusions* (2004)

<http://www.deathpenaltyinfo.org/article.php?scid=12&did=1176> This article by a Professor of Sociology at Rutgers University explains why the data used to prove the deterrent value of executions are misleading.

<http://www.deathpenaltyinfo.org/article.php?scid=40&did=1234> Description of the 2004 Justice for All Act.

Websites

<http://www.aclu.org/DeathPenalty/DeathPenaltyMain.cfm> The ACLU actively lobbies against the death penalty.

<http://www.abanet.org/publiced/focus/spr97dth.html> ABA scholarly forum on the pros and cons of the death penalty (1997).

<http://www.prodeathpenalty.com/>. This site is being developed as a resource for those searching the internet for pro-death penalty information and resources.

<http://www.dpinfo.com/> This is a pro-death penalty website.

<http://www.deathpenaltyinfo.org/> Death Penalty Information Center. This is an anti-death penalty website.

<http://sun.soci.niu.edu/~critcrim/dp/dp.html> Death Penalty Information and Resources, American Society of Criminology. See also <http://www.critcrim.org/death.htm>.

<http://nmrepeal.org/> NM nonprofit alliance of organizations and individuals committed to complete repeal of the death penalty.

<http://www.prospect.org/web/search.wv?query=death+penalty> Papers on death penalty topics from *The American Prospect*; anti-death penalty.

<http://2ssw.che.umn.edu/rjp/> Center for Restorative Justice and Peacemaking at the University of Minnesota.