

Social Policy: Capital Punishment

Position: Capital Punishment

The LWVO supports the following:

(Adopted 2005)

1. Abolition of the death penalty.
2. A moratorium on use of the death penalty.

Background: Capital Punishment

Following an 18-month statewide study and consensus process, LWVO adopted a position on the death penalty in 2005 calling for its abolition and a moratorium on its use. The study is available at www.lwvohio.org/possummary.htm. Violations of due process, bias against minorities, the unequal quality of representation for capital crime defendants, and the cost of the death penalty process led League members to the conclusion that Ohio's death penalty should be abolished. In 2007 LWVUS adopted a national position calling for the abolition of the death penalty with LWVO as a co-sponsor of the position. According to studies of the death penalty:

- The death penalty is inherently flawed, and no amount of reform can make it an appropriate sentencing option anywhere.
- Due process of the accused is often violated.
- Capital punishment is systematically biased against minorities.
- Over 100 persons on various state death rows have been wrongfully convicted and subsequently exonerated—including six in Ohio.

A 2010 poll by Lake Research Partners found that a clear majority of voters (61%) would choose a punishment other than the death penalty for murder, including life with no possibility of parole with restitution to the victim's family (39%), life with no possibility of parole (13%), or life with the possibility of parole (9%).

On March 9, 2011, Illinois Governor Pat Quinn signed legislation repealing the death penalty in Illinois. This makes Illinois the 4th state in the country to repeal the death penalty since 2005, following New York, New Jersey, and New Mexico. As Adam Liptak noted (*New York Times*, January 4, 2010), the American Law Institute concluded that the death penalty system is broken and cannot be fixed. This is particularly significant because the prestigious organization of judges, lawyers and law professors was the original source of the intellectual foundation for using the death penalty that the U.S. Supreme Court basically adopted when it reinstated capital punishment in 1976. According to Liptak, "A [2009] study commissioned by the [American Law Institute] said that decades of experience had proved that the system could not reconcile the twin goals of individualized decisions about who should be executed and systemic fairness. It added that capital punishment was plagued by racial disparities; was enormously expensive even as many defense lawyers were underpaid and some were incompetent; risked executing innocent people; and was undermined by the politics that come with judicial elections."

A botched attempt in September 2009, during which prison guards spent two hours trying to find an inmate's vein suitable for his lethal injection, raised numerous constitutional questions, including whether a second attempt would constitute "cruel and unusual punishment" prohibited by the 8th Amendment. On November 30, 2009, Ohio became the first state in the country to adopt a one-drug protocol for lethal injections.

In 2010—for the eighth year in a row—the number of new death sentences handed down in the United States dropped. Ohio set an Ohio record for executions in a year, with nine scheduled for 2010—three of which were commuted to life in prison without parole. Both Gov. John Kasich and Attorney General Mike DeWine continue to support the death penalty.

On July 8, 2011, federal judge Gregory Frost delayed the July 19, 2011 execution of Kenneth Smith. He ruled that Ohio's death penalty procedures are enforced haphazardly. If appealed and upheld, Frost's decision would

allow Smith to argue in an upcoming trial that the state violates the federal Constitution with its uneven application of its rules for executing inmates. Frost did not rule on whether Ohio's death penalty is constitutional. There are still nine more executions scheduled for 2011-2012.

Outlook: Capital Punishment

In January, 2011, Ohio Supreme Court Justice Paul Pfeifer, who was a member of the General Assembly that reinstated the death penalty in 1981, stated that the system is so flawed that the death penalty needs to be abolished. Terry Collins, former Director of the Ohio Department of Rehabilitation and Corrections, supported Judge Pfeifer's statement, further stating the death penalty is expensive, inefficient, and time-consuming and did not put the worst offenders on death row.

Legislation has been introduced over the past few years to both assess Ohio's death-penalty system and to make the killing of a judge or magistrate punishable by death; no legislation has gotten out of committee. On March 15, 2011, Representatives Ted Celeste and Nickie Antonio introduced HB 160 to abolish the death penalty. It has been referred to the House Criminal Justice Committee. It has 14 co-sponsors, two of which are Republican. On April 13, 2011, sponsor testimony was heard by the committee.

The number of death sentences imposed in Ohio is decreasing as more juries in capital-crimes cases choose "life without parole." Three death sentences were handed down in Ohio in 2008, two fewer than in 2007. Nationally, the use of the death penalty has declined by 12 percent and the number of death sentences imposed in 2008 hit the lowest level in 32 years (A. Johnson, *Columbus Dispatch*, and December 11, 2008). However, the Death Penalty Information Center reported Ohio was the only state outside the southern U.S. to carry out an execution in 2008. There were 5 in 2009, 8 in 2010, 4 executed and 4 more scheduled for 2011, and 7 scheduled for 2012. Ohio is second only to Texas in the number of scheduled executions.