

LWV Ohio Statehouse Day –March 31, 2015
LWVO Lobbyist Report
Abolition of the Death Penalty
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Background

LWVO adopted a position in 2005 calling for 1) the abolition of the death penalty, and 2) a moratorium on the use of the death penalty. In 2007, LWVUS adopted a national position calling for the abolition of the death penalty with LWVO as a co-sponsor of the proposed position. According to studies about the death penalty:

- It is inherently flawed, and no amount of reform can make it an appropriate sentencing option.
- 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.

Recent History

Task Force Report: The American Bar Association (ABA) released a report on Ohio’s death penalty in 2007. The report was troubling: Ohio fell short in 93% of the ABA standards for a fair and accurate state death penalty system. In response to this overwhelming deficit, Ohio Supreme Court Chief Justice Maureen O’Connor created the Joint Task Force to Review the Administration of Ohio’s Death Penalty in 2011. **After two years of review, the Task Force concluded its work in November of 2013.** A report with 56 recommendations to address the problems with Ohio’s death penalty was released in May 2014.

Key recommendations include:

- **Adopt American Bar Association guidelines for death penalty cases.** See: www.americanbar.org/content/dam/aba/migrated/moratorium/assessmentproject/ohio/finalreport.athcheckdam.pdf

Some of these recommendations are: require that all biological evidence be preserved in all potentially capital cases for as long as the defendant remains incarcerated; require all law enforcement agencies to videotape the entirety of custodial interrogations in homicide cases; implement mandatory lineup procedures; adopt increased attorney qualification and monitoring procedures; more vigorously enforce the rule requiring prosecutors to disclose to the defense all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates punishment.

- **Exclude individuals with serious mental illness from the death penalty.** Many prominent organizations already recognize that seriously mentally ill people are less culpable for their crimes because their disease inhibits a rational thought process.
- **Narrow eligibility for capital indictments within the felony-murder rule.** Data collected has shown that juries overwhelmingly do not find felony-murder to be the worst of the worst murder cases.
- **Establish mechanisms to address perceived racial bias at the trial level.**
- **Bring all state run crime labs to full accreditation.**
- **Establish a capital litigation fund.**
- **Create a Death Penalty Charging Committee at the Office of the Ohio Attorney General.**
- **Remove felony-murder specifications.** The death penalty is to be reserved for the worst of the worst murders according to the federal Constitution.

Stays, delays and exonerations: Three more death row inmates have been exonerated: Kwame Ajamu, Wiley Bridgeman and Ricky Jackson, three men convicted and sentenced to death in the 1975 slaying of a Cleveland businessman. Charges against them were dropped after the key witness in the case— a then-13-year-old

boy— recanted in 2013. (Ohio now has 9 total.) On April 30, 2014, Governor Kasich commuted the death sentence of Arthur Tyler to life in prison without possibility of parole. All 2015 scheduled executions have been rescheduled for 2016. To date, Ohio has executed a total of 53 since 1999 and 393 overall.

Mike Farrell, actor and human rights leader, argued in the *Cleveland Plain Dealer* that the case of Anthony Apanovitch in **Ohio** demonstrates several significant problems with the death penalty. Apanovitch was recently granted a new trial, 30 years after he was convicted. Evidence in Apanovitch's case was withheld from his defense, and a DNA test was not performed until decades after the trial. When a DNA test was eventually performed, it excluded Apanovitch, leading a judge to acquit Apanovitch on one count of rape, dismiss another rape charge against him, remove a specification from the murder charge, and order a new trial on the remaining murder and burglary charges.

Procedures: Due to last year's concerns over the drug cocktail being used, the Prosecutor's Association along with the Attorney General of Ohio requested legislation to protect compounding pharmacies and attending physicians. A significantly watered down version of HB 663, the "Secret Executions Bill," was passed just before the holidays. Several terrible aspects were removed entirely. The bill still grants anonymity to medical professionals who get involved in the execution process, but it requires oversight by an ethics panel, and it has a two year sunset provision. Legislators added amendments to begin doing what was included in the May release of 56 recommendations by the Supreme Court Task Force on the Administration of Ohio's Death Penalty. The bill goes into effect March 20, 2015. (LWVO acted in opposition to this legislation due to lack of transparency. Our opposition and that of the groups participating in Ohioans to Stop Executions, OTSE, encouraged the Senate to water down the bill.)

Several legislators made clear statements that the Task Force recommendations will receive full consideration in 2015.

New voices: A new study by the **Brennan Center for Justice** examined several possible explanations for the dramatic drop in crime in the U.S. in the 1990s and 2000s. Among the theories studied was use of the death penalty, which the report found had no effect on the decline in crime. The authors explained, "Empirically, capital punishment is too infrequent to have a measureable effect on the crime drop." The authors noted criminals do not consider the consequences of their actions, particularly when the consequence is rarely applied, as in the case of the death penalty. "Much psychological and sociological research suggests that many criminal acts are crimes of passion or committed in a heated moment based only on immediate circumstances." They concluded, "In line with the past research, the Brennan Center's empirical analysis finds that there is no evidence that executions had an effect on crime in the 1990s or 2000s." Ultimately, they attributed drop in crime to various social changes and policing tactics.

Voices now in Ohio: **Jim Petro**, former **Attorney General of Ohio**, strongly supported the death penalty as a state legislator, believed the state would save money because of the death penalty, and that it would act as a deterrent. "We are probably safer, better and smarter to not have a death penalty." Many of Petro's concerns are in his book, ***False Justice: Eight Myths that Convict the Innocent***, in which he underscores the risks of mistake and identifies flaws in how police and prosecutors have handled capital cases. **Ohio Supreme Court Justice Paul Pfeifer**, who as a member of the General Assembly that reinstated the death penalty in 1981, has now 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.

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%).

Other states: Gov. Tom Wolf of Pennsylvania has issued a moratorium. In **Arkansas**, a bill to abolish the death penalty passed the Senate Judiciary Committee on a voice vote. Arkansas last carried out an execution in 2005. A similar bill in **Montana** failed on a tied vote (50-50) in the full House. Montana's last execution took place in 2006. **Virginia** legislators rejected a bill to shield information related to lethal injection as state secrets.

Message: LWVO urges continuing advocacy in support of the abolition of the death penalty. Working with Ohioans to Stop Executions, the process may be taken in steps based on the Ohio Task Force recommendations.