

LWV Ohio Statehouse Day – April 9, 2014
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. (See the study committee's report at www.lwvohio.org). 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 of the death penalty:

- The death penalty 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

The past year has seen a lot happening on multiple fronts.

Task Force and Expected 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 over 40 recommendations to address the problems with Ohio's death penalty is expected in the Spring of 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.authcheckdam.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; (3) 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: On November 13, 2013, Governor Kasich granted Ronald Phillips' request for a temporary stay of execution so that medical experts can assess whether or not Phillips' non-vital organs or tissues can be donated to his mother or possibly others. Execution is now scheduled for July 2, 2014. On February 7, Governor Kasich granted a Warrant of Reprieve to Gregory Lott, postponing execution from March 19 to November 19, 2014. To date, Ohio has executed a total of 53 since 1999. Executions scheduled: 5 in 2014, 6 in 2015, and 1 in 2016. (Ohio has had 6 exonerated, the latest is Joe D'Ambrosia in 2012.)

Procedures: Questions about the appropriateness of new lethal injection methods have recently stayed executions in **Louisiana** and **Ohio** and caused the **Florida** Supreme Court to order a hearing prior to the next execution there. The common drug in question in all three states is midazolam, a sedative used as the first drug in a 2- or 3-drug protocol. Governor John Kasich ordered an 8-month stay of execution for Gregory Lott so the state can complete a review of its new lethal injection procedure.

Ohio announced a fifth attempt at a viable lethal injection protocol on Friday, October 4, 2013. The latest protocol affirmed pentobarbital as the drug of choice for executions and allows compounding pharmacies to mix the lethal dose of the drug. Two other drugs, Hydromorphone and Midazolam, were added as a back up to pentobarbital.

The new lethal injection was first used to execute **Dennis McGuire** on January 16, resulting in gasping and choking sounds from the inmate. Media witnesses described how the inmate spent at least 10 minutes snorting and gasping. The protocol change resulted from a national shortage of Sodium Thiopental and the manufacturer's announced discontinuation of production.

Call for moratorium: Opponents of capital punishment on January 22, 2014 asked Gov. John Kasich to impose a moratorium on executions and they pushed legislation that would eliminate the death penalty in Ohio. In a letter to Kasich, state Reps. Nickie Antonio, D-Lakewood, and Dan Ramos, D-Lorain, said, "...we implore you to use your executive power to grant a full moratorium until we can ensure that humane and constitutional policies are in place." Kasich press secretary Rob Nichols said, "The governor supports the death penalty and the procedure is under review just as it is reviewed after every execution."

New voices: **Julia Bates** has been the lead prosecutor in Lucas County since 1997. She said death penalty cases are "torturous" for those involved, including judges, jurors, prosecutors, defense attorneys, and victims' families, who are subjected to years of appeals. "It just seems there ought to be a better way," Mrs. Bates said. Capital cases have sharply declined in Lucas County and in the state over the last few years. One of the most significant factors contributing to this decline is the alternative sentence of life without parole, which became more available in 2005. Bates said her office is not avoiding death penalty prosecutions, but requires that "there should be no doubt about guilt. The guilt should be absolute. It should be unquestionable."

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. But, he recently said, "Neither of those things have occurred, so I ask myself, 'Why would I vote for it again?' I don't think I would. I don't think the law has done anything to benefit society and us.." He added, "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.

These are added to: 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%).

Legislative Activity: Currently, Antonio and Ramos are sponsoring House Bill 385, which would eliminate capital punishment for any future aggravated murder cases and replace it with three sentencing options: life in prison without parole or life in prison with parole after 20 or 30 years. The Antonio-Ramos bill, introduced Dec. 10, has 12 co-sponsors, including the sole Republican, Terry Blair, R-Washington Twp. It mirrors a bill introduced by Antonio in 2011 that died in committee. John Murphy of the Ohio Prosecuting Attorneys Association said his group opposes the bill.

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.