



**LEAGUE OF WOMEN VOTERS®
OF OHIO**

17 South High Street, Suite 650 • Columbus, Ohio 43215
Phone (614) 469-1505 • Fax (614) 469-7918
www.lwvohio.org

**Written Testimony on SB 270
Submitted to the Senate Judiciary Committee
By Karen Leith, Death Penalty Specialist
and Carrie Davis, Executive Director
League of Women Voters of Ohio
Tuesday, February 14, 2012**

Chairman Wagoner and members of the Senate Judiciary Committee: Thank you for this opportunity to submit written testimony on SB 270, which would abolish the use of the death penalty in Ohio.

The League of Women Voters of Ohio believes that the death penalty in Ohio should be abolished. Following a comprehensive 18-month study of Ohio's death-penalty system, the League concluded in 2005 that Ohio's death penalty should be abolished because of significant inequities in its application, including:

- systemic bias against minorities,
- violations of due process,
- inequalities in legal representation of defendants, and
- the uneven application of the death penalty and the injustice inherent in the system.

Additionally, the death penalty is inherently flawed, and no amount of reform can make it an appropriate sentencing option. Over 140 persons on various state death rows have been wrongfully convicted and subsequently exonerated—including six in Ohio.

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. In addition to the study by the League of Women Voters of Ohio (2005), two other independent studies—the AP (2005) and the American Bar Association (2007)—provide sufficient evidence for the re-examination and abolishment of our state's system.

I would like to focus on new support for our original findings in the study:

1. Death penalty is not a deterrent.
2. The inherent flaws in the system contribute to wrongful convictions.
3. Inequalities exist in legal representation of defendants.

1. Death penalty is not a deterrent.

The death penalty is not a deterrent. First, if it were, one would expect that the states with death penalty laws would have fewer homicides than those without it. However, after the federal government reinstated the death penalty, the gap between the murder rates in states without the death penalty has consistently been lower, in fact, for 2010, it was 25% lower.

Second, Victor Streib, a respected authority on death penalty issues in America, argues 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 principal 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." To be a deterrent, the death penalty would have to be consistently and promptly used. Promptness in carrying out the death penalty is tantamount to abrogating a citizen's constitutional rights. Indeed, there is often a twenty plus year gap between conviction and execution.

2. The inherent flaws in the system that contribute to wrongful convictions.

Recently, Governor John Kitzhaber of Oregon announced a halt to all executions in the state. He cited the expensive and unworkable system that is "morally wrong and unjustly administered."

On March 9, 2011, Illinois Governor Pat Quinn signed legislation repealing the death penalty in Illinois, which had wrongfully condemned 20 people to death since 1977. 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. "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."

Just last year, 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.

Former Attorney General Jim Petro and his wife Nancy discuss eight myths that convict the innocent in their book, *False Justice*. Among those myths is eye witness testimony which has come under Supreme Court scrutiny and scientific scrutiny. Recently considered by U.S. Supreme Court, *Perry v. New Hampshire* is a case questioning the validity of eyewitness testimony when the identification was made under unreliable circumstances. At the same time, years of scientific study on the accuracy of human memory are pointing to the need for reform in the use of eyewitness evidence in criminal cases. About 75% of DNA-based exonerations have come in cases where eyewitnesses have made mistakes. Scientists suggest that witness testimony should be viewed more like trace evidence, with the same fragility and vulnerability to contamination. Strong emotions felt by victims of a crime is one such possible area of contamination.

The high rate of reversible error in death penalty cases in Ohio highlights the potential for mistaken execution. Indeed, nearly 40 percent of Ohio's death penalty cases have been overturned by the federal appeals court. Nationally, more than 140 former death row inmates have been exonerated since 1973.

On December 7, 2011, the American Bar Association released a report assessing Kentucky's system of capital punishment and calling for a halt to executions in the state. The two-year study recommended that the state temporarily suspend executions until serious issues of fairness and accuracy are addressed. The review reported that courts have found an error rate of more than 60 percent in the trials of those who had been sentenced to death.

3. Inequalities exist in legal representation of defendants.

A recent death penalty trial in Butler County will cost three to four times more than the cost of a life-without-parole trial, according to the trial judge, Michael Sage. Judge Sage said, “[The cost] is so great we can’t afford to pay for that directly out of our ongoing budget. All the costs associated with that trial we will take directly to the commissioners.” An Indiana analysis by the Legislative Services Agency for the General Assembly found the average cost to a county for a trial and direct appeal in a capital case was over 10 times more than a life-without-parole case. The average death case cost \$449,887, while the average cost of a life-without-parole case was only \$42,658. A recent case in Cleveland cost taxpayers more than \$600,000.

Despite the high costs, defense attorneys are often paid very little. Chris Pagan, who has defended several death penalty cases, recently said he would have to abandon this type of work because of the inadequate compensation death penalty defense attorneys receive: “The [compensation rates] are extremely low compared with the costs in other metropolitan areas. . . . I’m not doing it anymore I can’t afford it. You get 40 bucks an hour and my overhead costs more than that.”

David Bodiker, the 2004 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.” First, lawyers may be death penalty-qualified, but that does not necessarily mean they will be able to devote their full attention to a capital case. 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. Thus, the quality of representation varies from capital case to capital case, and those who are poorly represented are more likely to end up on death row. Witness, for example, the cases of Richard Frazier and Shawn Williams—two recent instances in which the death sentences were overturned, at least in part, because of inadequate representation. (Shawn Williams exemplifies the inadequacies of the capital punishment system. The Ohio Supreme overturned his death sentence in 2003 after finding “errors on the part of the judge, prosecutor and defense counsel during the penalty phase.”

(http://www.state.oh.us/opd/dp_williams_shawn/dp_williams_shawn.htm.)

In summary, the League of Women Voters of Ohio believes that the protection of society is achievable without the imposition of the death penalty. Consistent with our belief that the death penalty should be abolished, we support the passage of SB 270.

The League of Women Voters of Ohio, a nonpartisan political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy.