

LWV Ohio Statehouse Day – April 26, 2016

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 and New Voices

In a divided 4-3 decision, the Ohio Supreme Court on March 16, 2016, authorized the state to try for a second time to execute death row inmate Romell Broom. The court majority held that a second execution attempt would not violate constitutional protections against twice placing a defendant in jeopardy of life, nor constitute cruel and unusual punishment. Ohio first tried to execute Broom on September 15, 2009, but the attempt was called off after two hours of unsuccessful efforts by executioners to establish a viable IV line. This ruling might set another opportunity for the U.S. Supreme Court to consider the constitutionality of capital punishment.

In two separate op-eds, an Ohio Supreme Court Justice and a death row exoneree from Ohio expressed concerns about wrongful convictions that have led them to believe the death penalty should be abolished. In *The Highland County Press*, Justice Paul Pfeifer wrote about the "long and complex" case of Thomas Keenan, who was granted a new trial because prosecutors illegally withheld evidence. Pfeifer points to the misconduct in Keenan's case as a reason why the death penalty should be abolished. Writing for CNN, death row exoneree Ricky Jackson argued that the risk of wrongful convictions is too great to continue using the death penalty. He was sentenced to death and spent 39 years wrongfully incarcerated before his 2014 exoneration. Citing cases such as Cameron Todd Willingham and Carlos DeLuna, Jackson cautioned that not all innocent people sent to death row are exonerated.

Terry Collins, retired director of the Ohio Department of Corrections and Rehabilitation, published just before his death an op-ed about the death penalty, "The Death Penalty Isn't Worth Fixing," at the invitation of WCPO in Cincinnati on February 24, 2016. In that he referenced his association with the newly established national project, Public Safety Officials on the Death Penalty.

"Ohio's death penalty is plagued by vast inequities" grounded in race, gender, and geography, according to a new University of North Carolina study. UNC-Chapel Hill political science professor Frank Baumgartner examined the 53 executions Ohio has conducted since resuming capital punishment in the 1970s. His study found "quite significant" racial, gender, and geographic disparities in Ohio's executions that, Baumgartner said, "undermine public confidence in the state's ability to carry out the death penalty in a fair and impartial manner." More than half of the state's executions were concentrated in just 4 counties, while more than 3/4 of Ohio counties have not produced any executions. Lake County had an execution rate that was 11 times the statewide average. Although the state's three most populous counties (Cuyahoga, Franklin, and Hamilton) have similar murder rates, Hamilton's 0.60 executions per 100 homicides was more than double the rate in Cuyahoga and nearly 9 times that in Franklin. Sharon L. Davies, Executive Director of the Kirwan Institute for the Study of Race and Ethnicity at The Ohio State University, said that the "race or gender of a victim, and the county of the crime, should not influence who is sentenced to die" and urged "Ohio citizens and lawmakers[to] review the findings of this important research."

Capital murder indictments have plummeted and life sentences risen sharply in Ohio over the past five years, according to a report by the *Cleveland Plain Dealer*. The newspaper's examination of Ohio prison and other public records revealed that capital indictments in the state have dropped by 77% since 2010, mirroring national trends. Prosecutors are far more likely to seek a sentence of life without parole in cases in which they once would have pursued the death penalty. The paper also reports that the number of inmates sentenced to life without parole has skyrocketed by 92% since 2010.

Among other factors, changes in District Attorneys, reduced public support for the death penalty, and consideration of costs and the impact of capital proceedings on the families of murder victims have led to fewer death penalty cases. The difference in Cuyahoga County (Cleveland) is particularly striking: since prosecutor Timothy McGinty became district attorney in 2012, the office has sought death in fewer than 7% of eligible cases. Under McGinty's predecessor, Bill Mason, the office sought death in 78% of eligible cases.

Former Ohio Supreme Court Justice Evelyn Lundberg Stratton testified in state legislative hearings on October 14, 2015, that Ohio should ban use of the death penalty against defendants who suffer from serious mental illness when they commit a capital crime. Stratton, who was appointed to the court in 1996 and served, following reelection, until 2012, called the death penalty "inefficient, ineffective and a great burden on our society." Stratton said that the U.S. Supreme Court has barred the execution of juveniles and people with intellectual disabilities because of their reduced culpability. She told the Ohio Senate Criminal Justice Committee that people with serious mental illnesses have similarly reduced culpability. In 2014, the Ohio Supreme Court Joint Task Force on the Death Penalty issued 56 reform recommendations, including a ban on executing those with serious mental illness. Stratton said the bill would apply to defendants diagnosed with such serious mental illnesses as schizophrenia, bipolar disorder, and depressive and delusional disorders. The bill (#?) has bipartisan sponsorship and is also supported by the National Alliance on Mental Illness. **(LWVOhio issued a resolution at its 2015 Convention in support of this bill without any added amendments to change its intent.)**

Procedures:

The **Ohio** Department of Rehabilitation and Correction announced on October 19, 2015, that the state was postponing all executions until at least 2017 because it has been unable to obtain the lethal injection drugs necessary to carry them out. Governor John Kasich issued warrants of reprieve rescheduling the executions of 11 death-row prisoners with execution dates in 2016 and a 12th with a January 2017 execution date. Ohio rescheduled the executions for dates in 2017 through 2019.

Ohio passed a secrecy law (**HB 663**); LWVO acted in opposition to this legislation due to lack of transparency.) to shield the identity of any lethal injection drug provider. However, the *Columbus Dispatch* recently reported that the law did not work because Ohio pharmacies, bound by the Hippocratic oath or fearing adverse reactions from their customers, did not want to be involved in executions.

Ohio also has been unable to obtain lethal injection drugs from abroad. In June, the U.S. Food & Drug Administration warned the state that importation of execution drugs would violate federal law. The state has sent a letter to the FDA arguing that it should be able to legally import sodium thiopental for executions. Ohio's last execution was the botched execution of Dennis McGuire on January 16, 2014, using an experimental two-drug protocol of midazolam and hydromorphone. Witnesses reported that McGuire gasped, snorted, and struggled throughout the execution, taking 25 minutes to die. After that execution, Ohio announced that it would shift to a one-drug protocol of either pentobarbital or sodium thiopental.

Other states: **Arizona** and **Texas** attempted to import lethal injection drugs in violation of federal law, but the shipments were halted by U.S. Food and Drug Administration officials in late July. *The Arizona Republic* reports that the **Arizona** Department of Corrections paid \$27,000 for sodium thiopental for use in executions, but the shipment was halted at the Phoenix airport by U.S. Food and Drug Administration officials. The FDA halted a second shipment of sodium thiopental from the same shipper at the Houston airport bound for Texas prisons. Sodium thiopental was widely used as the first drug in executions until the sole U.S. manufacturer halted production in 2011 over concerns about the product's use in executions.

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.

Currently, legislators in Ohio are seeking to enact death penalty reforms as the state grapples with problems in the application of capital punishment. Sen. Bill Seitz, a Republican, and Sen. Sandra Williams, a Democrat, are working on bills to address some of the reforms recommended by the Ohio Supreme Court Death Penalty Task Force. Currently, the focus is on the severely mentally ill. There were hearings in the Senate Criminal Justice Committee on Jan. 27 and Feb 10.