

Feb. 22, 2013

To: Members of the House of Representative’s Committee on Judiciary

Re: Feb. 26th Hearing on HJR 1, to repeal the Oregon death penalty

Fr: Oregonians for Alternatives to the Death Penalty, an Oregon 501-C3 advocacy organizations supporting repeal of the death penalty

The following pages provide information on many of the aspects that surround the Oregon death penalty. The sources of studies and research findings are included. For more information, or if there are questions, please do not hesitate to contact us at (503) 990-7060 for Ron Steiner, Board Chair (rsteiner@swcp.com) or Jeff Ellis (3206) 218-7076 (jeffreywinellis@gmail.com)

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Death Penalty Takes a Downturn in 2012

Oregon's death row is shrinking. Since Governor Kitzhaber declared his moratorium on executions, no new death sentences have been imposed and six death sentences have been overturned.

On November 22, 2011, Governor John Kitzhaber declared a moratorium on executions in Oregon. In the 13 months following the moratorium not a single new death sentence was imposed by an Oregon jury. No capital trials were scheduled in 2012, so we ended the year without a single new death sentence. In fact, it has now been over 18 months since any Oregon jury imposed a death sentence. While the legislature may soon begin to debate whether to let the people vote on replacing the death penalty, Oregon prosecutors and juries have told us that, in every day practice, life without the possibility of release is an acceptable result even for the so-called "worst crimes."

During the 14 months since the moratorium, six death sentences have been overturned. Oregon courts overturned the death sentences for Robert Langley, Dayton Rogers, Jeffrey Sparks, Jesse Fanus, Travis Gibson and Martin Johnson. In each case, the court found that the death sentence was the product of an unconstitutional trial that resulted in an unfair and unreliable result. For example, the late Judge Timothy P. Alexander overturned Travis Gipson's death sentence after finding that Gibson's original attorney failed "to demonstrate a true understanding of how to defend his client" at his trial.

When he announced the moratorium, Governor John Kitzhaber stated: it was time for Oregon to consider a different approach. "Juries, prosecutors, and judges have responded to Governor Kitzhaber's call for reconsideration by repeatedly reaffirming that the death penalty system is broken. They have also told us that a life without parole sentence is a preferable alternative," said Jeffrey Ellis, Director of the Oregon Capital Resource Center. "Oregon's death penalty has never worked. Instead, when death sentences are imposed, we spend millions of dollars and wait decades for cases to eventually be resolved to life sentences. On the other hand, when life sentences are imposed, the cases quickly conclude. In response, the use of the death penalty in this state has fallen dramatically," Ellis added. "Oregonians are practical people. We'd rather spend thousands on a life sentence, than millions on a death sentence that will become a life sentence many years later," he concluded.

Does the Death Penalty Prevent More Murders?

Academic and professional researchers and institutions over the years have disagreed on this subject. In 2012, the National Academies National Research Council, the most respected independent research organization in the land, examined three decades of research and concluded that the research is not useful. "The committee concludes that research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases or has no effect on homicide rates". This learned conclusion differs from those who argue that the death penalty is a deterrent to violent crime and murder. (1)

In the 2010 Smart on Crime survey of 500 law enforcement executives, the majority of police chiefs and sheriffs concluded that the death penalty is not a deterrent. (2)

In another study, conducted by Prof. Michael Radelet, of the University of Colorado, 88% of the top criminologists in the country do not believe the death penalty acts as a deterrent to homicide. Additionally, 87% believe abolition of the death penalty would have no significant effect on murder rates.

- Federal Bureau of Investigation comparisons of states with and without the death penalty show that those states without a death penalty consistently have lower murder rates per 100,000 population than those states that have a death penalty.

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
With DP	5.70	5.82	5.82	5.91	5.71	5.87	5.90	5.87	5.72	5.26	5.00
W/O DP	4.25	4.25	4.27	4.10	4.02	4.03	4.22	4.10	4.05	3.90	4.01
%Dif	34%	37%	36%	44%	42%	46%	40%	43%	41%	35%	25%

What About Oregon?

Compared with other death penalty and non death penalty states Oregon's murder rate, per 100,000 population has remained consistently low. Although Oregon does have the death penalty in law, it has only executed two inmates since 1962. Both inmates relinquished their appeals. Since it has not been shown that the death penalty deters murders, the death penalty does not seem to be a factor in Oregon.

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
2.0	2.4	2.0	1.9	2.5	2.2	2.4	2.0	2.2	2.3	2.4

FBI Uniform Crime Statistics. <http://www.fbi.gov/stats-services/crimestats>

(1) Source: Deterrence and the Death Penalty, April 18, 2012, THE NATIONAL ACADEMIES National Research Council, Division of Behavioral and Social Sciences and Education, Committee on Law and Justice, Committee on Deterrence and the Death Penalty

(2) "Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis. 2009. National poll of Police Chiefs, from the Death Penalty Information Center.

Justice

Many people feel that killing convicted murderers will satisfy their need for justice, revenge or retribution. They feel that certain crimes are so heinous that execution of the criminal is the only reasonable response.

The scales of justice show two cups balanced, symbolizing equal treatment under the law. The administration of the death penalty is anything but fair, balanced and equitable. The death penalty, as used in this country, is biased against the poor and people of color. Fairness is not always practiced when it comes to the death penalty.

The administration of the death penalty is carried out by human beings. Humans make mistakes. There have been 142 people exonerated from death row in these United States, since 1976, as of a result of mistakes being corrected before the convicted person was executed. While DNA has played an important role in 19 of those cases, judicial errors, inadequate defense, prosecutorial misconduct, false testimony, forced confessions and eventual confessions by the real killer also are cited in the correction of those mistakes. Inequality in defense, in jury selection and in prosecution lead to a system that cannot be considered "just" and "fair".

Less than 2% of those tried and convicted of aggravated murder receive a death penalty. Those that do get a death penalty are overwhelmingly poor and a disproportionate percentage is people of color.

Juries made up of mostly white males convict people of color at a much higher rate than cases involving a white person killing a person of color or a victim or perpetrator of the same race.

In addition to race being an unfair factor, "place" is also a source of inequality in the administration of the death penalty. The same crime can be committed in one state with a death penalty or a state without a death penalty. They are not handled in the same manner. A crime committed in a county with a prosecutor who seldom pursues a death penalty will be treated differently than the same crime committed in a county with a politically ambitious, "tough on crime", prosecutor.

Another element that causes an imbalance in outcomes in death penalty eligible cases is the fact that there is no consideration of "comparative proportionality", or comparison of one murder to another. If the death penalty is supposed to be saved for the "worst of the worst", there is really no way to determine who they may be. There are glaring examples on Oregon's death row supporting this point. All murders are totally repugnant. Justice would provide that all those convicted of aggravated murder be treated in a similar fashion.

Unlike many states Oregon does not require prosecutors to exercise any discretion with regard to the death penalty decision. Instead, the death penalty is an option once aggravated murder charges are filed.

Murder Victim Families Against the Death Penalty

Supporters of the death penalty say that we must provide “closure to the family of murder victims. When a murder occurs, the victim’s family wants “justice done” which some feel will provide closure to their grief, pain and suffering;

Families that have suffered the unimaginable pain and sadness of losing a loved one are not uniform in their reactions. Some think that justice will be served and closure can be attained by the execution of the convicted killer. Other family members find this “promise of closure” to be a myth. For them there is no closure, they will always love and remember their lost loved one. They do not see more violence, in the form of executions (which creates yet another victim family) as a way to honor their loved one. They will always remember.

They seek a means of moving on with their lives and reconciliation. For them the seemingly endless appeal trials which continue to re-open the emotional wounds, are exhausting and serve no good purpose.

In Oregon there are many family members who belong to Murder Victim Families for Reconciliation and/or Murder Victim Families for Human Rights, will speak up for life without parole as being the just outcome. The perpetrator is punished, the public is safe and they can try to heal and move on with their lives.

According to Silverton, Oregon’s Aba Gayle whose daughter was murdered, “Do not assume that healing means all grieving is over. Lives have been irrevocably damaged. There are scars that never go away. The death penalty just keeps breaking open those scars and causing suffering over and over. The death penalty does not help us heal. It is merely revenge. I feel that an execution would dishonor the memory of my beautiful daughter.”

Have we had mistakes in Oregon?

Innocence and Mistakes: (revised 2/6/13) At the time they were convicted, some more than once, the juries had no reasonable doubt that they were guilty. Some were re-sentenced two or three times before evidence of their innocence was found. As of January 2012 none of those who have been sentenced to death in Oregon since 1984, when the current death penalty law was passed, have yet been found to be innocent. However, we have come perilously close. Six people were convicted of murder, or aggravated murder, and given sentences ranging from twenty years in prison to life without the possibility of parole.

Christopher Boots and **Eric Proctor** were convicted of murder in Lane County in 1985 and sentenced to twenty years each. The evidence was thin and forensic evidence was later debunked. Most importantly, the person who committed the robbery and murder was identified. Released in 1994, after eight years in prison, Boots and Proctor settled with the City of Springfield for \$2 million.

Laverne Pavlinek implicated her partner **John Sosnovske** in the murder of a young woman whose body was found in the Columbia Gorge in 1992. Apparently she did it in order to escape an abusive relationship. The evidence shows she learned enough from news reports and information she gleaned from her interrogators to convince them of Sosnovske's guilt. Sosnovske pled no contest in order to avoid a death sentence and received a sentence of life without parole. Pavlinek was also convicted of murder and given a life sentence. Their case fell apart when Keith Jespersen, the "Happy Face Killer" who was in prison for other murders, confessed and gave information that only the police knew. Sosnovske and Pavlinek were released in 1995.

Santiago Ventura Morales was sentenced for the murder of another Mexican man in 1986. There were problems from the beginning; the county had no interpreters who spoke Ventura's Mixtec dialect and he could not understand or cooperate in the investigation and trial. Most concerning, however, was that another person had confessed to the crime. Jurors, who had convicted him, almost immediately expressed doubts but it took a lengthy investigation by private citizens to identify the murderer and convince the authorities Ventura Morales was innocent and should be released. Ventura Morales was released in 1991.

Phillip Scott Cannon was convicted of aggravated murder and sentenced to life without the possibility of parole in 1999 for the murder of three people in Polk County. He maintained his innocence throughout his trial, the eleven years he served in prison, and through his ultimate release. Testimony from witnesses who had been at the murder scene to purchase drugs said that Cannon had acted "strangely" and from the owner of the property who later served time for a subsequent murder apparently carried weight. However, the strongest evidence came from a forensic technique called "bullet lead analysis." This technique, then suspect and now completely repudiated by the FBI, purported to match the lead from crime scene bullets to the

batch in which they had been manufactured. If a defendant had bullets from the same batch in his possession, it was considered that proof had been established. In spite of the technique being under suspicion at the time of Cannon's trial, the prosecution used it to convict him. The courts finally recognized there was no evidence to sustain a verdict of guilty and Cannon's conviction and sentence were overturned in December 2009. It was subsequently found that the District Attorney's office had lost or destroyed all of the original trial evidence. The unreliability of the original witnesses and the lack of investigation of other available witnesses who could have refuted the prosecution evidence cast doubt on the truth of Cannon's conviction. He could have received a sentence of death. Fortunately he was given a sentence of life without the possibility of parole making it possible to reexamine his case before he could be executed.

Of the 37 people on Oregon's death row presently, six have had their convictions overturned and are awaiting re-trial. The main reasons have been mistakes made by judges in their instructions to juries, lack of adequate legal defense and competency of the defendant to assist his defense team.

A great number of the convictions and death sentences have been overturned during appeals.

Death penalty supporters insist that the system in Oregon has made no mistakes because no death sentenced person has been exonerated. It is only through pure luck that this has not happened.

Oregon does not need the death penalty – it is too risky and an execution cannot be undone.

From 1976 through January 2012, 142 people from 26 states have been released from death rows around the nation, having been found innocent of the crimes for which they were sentenced to death.

Of the 142 exonerated, 72 are Black, 13 Latino and 2 other people of color. That total of 87, represents 61% of the 142 total.

Is a death penalty needed to assure public safety?

Supporters of the death penalty say, “once executed, a violent criminal will never harm anyone again”. While this is true, there is no evidence that a death penalty is superior to the alternative of life without the possibility of parole.

The professionals working in the Oregon Department of Corrections do a great job of keeping the public safe from violent criminals. Life without the possibility of parole works very well to keep the public safe. Those states that do not have a death penalty generally have a lower murder rate than those states with a death penalty and the public is just as safe.

The safety of prison personnel is another important element of public safety. It is a fact that there have been murders in prisons in Oregon and other states. Oregon has not had a single murder committed by a person on death row. While Oregon has 37 people isolated on death row, there are 137 prisoners in the Oregon penitentiaries, serving sentences of life without parole. According to prison personnel, the “lifers are the best behaved prisoners in the entire system”. People who are living a life of crime on the streets are in much greater peril of being a victim of violent crime or murder than when they are in prison. In addition to the 37 people on death row and the 137 true life prisoners, there are over 600 people in Oregon prisons serving sentences for murder with the possibility of parole.

According to the Oregon Department of Corrections records, there have been 11 murders committed in the entire prison system, in the past 27 years, which is as long as those records have been kept. That figure equates to one murder in prison for every two years and four months.....less than one for every two years and four months. Any murder is deplorable. But, with the effectiveness of the Oregon corrections professionals, the murder rate on the inside is no greater than the murder rate on the outside.

Not having a death penalty will not make a difference in public safety. The things that make a difference in public safety and deter violent crime and murder are more police on the streets, better investigative tools, more rehabilitation programs for the addicted, better schools and interventions into abusive households. Why waste a millions of dollars on a death penalty, when the savings could be invested in the programs listed above that do deter crime and keep the public safe.

Religion and the Bible

Some individuals who support the death penalty say: The Bible points out that the death penalty is justified..... “an eye for an eye” is often cited as justification for having the death penalty. Since someone took a life, the only fair repayment would be the perpetrator’s life in return.

Oregonians for Alternatives to the Death Penalty’s response:

The Bible does contain many pieces of text that support revenge and retribution as a response to murder. Most of those can be found in the Old Testament that also calls for death to those who commit adultery, talk back to parents, and steal from a neighbor and other offenses that would never rise to the same level of punishment today. The Old Covenant also contains “thou shalt not kill” as one of the 10 Commandments.

The New Testament leads its readers and followers to messages of “love thy neighbor”, “do no harm”, non-violence, compassion and following the example of Jesus Christ who sat with the downtrodden and admonished the people for retaliating in violent ways.

Most of the main-stream religions practiced in the United States and Oregon, preach against a death penalty: Christians, Jews (Orthodox, Conservative, Reform and Reconstructionist), Buddhists, Sikhs, and Muslims in this country speak against the death penalty as another act of violence.

Ecumenical Ministries of Oregon and the leadership in the Catholic Archdiocese of Oregon, the United Methodist Conference, the Episcopal Diocese, the ELCA Lutheran Synod, the American Baptist Church, the Presbytery of the Cascades, the United Church of Christ, the Jewish Federation of Greater Portland, the Unitarian Universalist congregations of Oregon and other faith communities in Oregon all agree in their opposition to the death penalty.

Every human being, in spite of their worst deeds, has value. To kill people, who kill people, in order to show that killing people is wrong, just does not make sense. Life without the possibility of parole works to keep the public safe, impose severe punishment on the convicted and provide for an opportunity for the convicted to work to make amends and restitution to the murder victim’s family. More killing by the State is not an appropriate way to “respect life”. We are the State, therefore all citizens of the state play a role in this act of violence, which most faith communities oppose.

We the people are the state

Some people feel that the State has a responsibility to protect its citizens and executions are the surest way to provide protection against murderers.

In the abstract, people may feel that it is the responsibility of the State and the State should carry out the execution. But, we are the State. The people are the State. When there is an execution, everyone is responsible, yet a few citizens are asked to carry out the task of killing another human being.

Frank Thompson, who was the Superintendent of the Oregon State Prison when there were executions in 1996 and 1997, will testify that it was a harrowing experience to be responsible for preparation and carrying out an execution. The good men and women who work in the prison are placed in a situation that few, if any, citizen would want to take on. When life without parole is an option, it makes no sense to have state employees be asked to participate in such an act. The task is made even harder when one considers that there is the possibility that a mistake has been made and an innocent person is executed.

The possibility of executing an innocent person is too high of a risk to undertake. The alternative provides for public safety, punishment for the offender and avoids any possibility of a fatal mistake.

Dave Cook, former Director of the Department of Corrections, concurs with Mr. Thompson. ... "It is my belief that the death penalty is a failed public policy for three specific reasons. First, few, if any, murderers are deterred by the threat of being prosecuted and sentenced to a penalty of death. Second, through my conversations with both of the Oregon death row inmates who were executed I believe in their minds the more severe form of punishment would have been a life of confinement and not the act of execution. Finally: For me this is the most closely held belief..... Moral and civilized societies do not execute convicted inmates when just punishment alternatives exist."

Do mistakes happen? There have been 142 mistakes, as represented by the 142 people exonerated after spending many years on death row, for crimes they did not commit. There are many people who believe that Troy Davis was an innocent man, yet the State of Georgia executed him in 2011. Criminal investigators and forensic experts are very sure that Carlos de Luna and Cameron Todd Willingham were innocent when executed in Texas.

Have mistakes happened in Oregon as well? There is no claim that an innocent person has been executed here, but changing the most severe penalty for aggravated murder to life without the possibility of parole, makes sure it does not happen in the future.

OREGONIANS FOR ALTERNATIVES TO THE DEATH PENALTY

What is the cost of the death penalty in Oregon?

Over the last decade, Oregonians have spent over \$93 million on defense costs in death penalty cases.¹ If you factor in police, prosecutors, court and prison costs, it is reasonable to conclude that Oregonians have spent around \$200 million on death penalty cases over the last ten years. During that time, not a single person has been executed.

There is no dispute: the cost of the death penalty in Oregon far exceeds the cost of life without parole. Just as importantly, if the death penalty was replaced by life without parole the money currently spent on the death penalty could instead be spent on solving cold cases and funding victim's services.

The difference in cost between a death penalty and a non-death penalty murder case is startling. When the death penalty is an option, the costs increase astronomically.

Although there has never been a definitive Oregon study on all costs associated with death penalty cases, death penalty defense costs are known because they are all billed to a single agency. Over the past four years there has been an average of 41.25 aggravated murder cases pending in Oregon. The Oregon Office of Defense Services pays lawyers between \$50 and \$97 per hour. In contrast, according to the 2012 Economic Study of the Oregon State Bar Association, the average hourly rate for attorneys privately defending less serious criminal cases is \$214.

The *Oregonian* on April 19, 2009, quoted Ingrid Swenson, (then) executive director of the state's Office of Public Defense Services, saying her office spent \$213,232 per case for death penalty cases. Murder cases that did not involve the death penalty averaged \$24,876 per case, or 12 percent of the cost of a death penalty case.

Prosecutors also spend much more time on death penalty cases resulting in increased significant increased costs. At a Department of Justice (DOJ) Budget Presentation before the Public Safety Subcommittee of the Ways and Means Committee in the 2007 Legislative Session, representatives of DOJ state that the average amount of time allocated to complete a capital case was 4,577 hours at \$128 per hour. For example, the projected attorney hours per case for 2007-2009 were 15.7 hrs, for a post-conviction trial of a non-capital case whereas the trial for a capital case was projected as 1,886.02 hours. At \$128 per hour, the costs of a non-capital versus a capital trial were \$2,009 versus \$241,411.

By replacing the death penalty with life in prison without possibility of parole, Oregon taxpayers would save millions every year. Our resources would be better spent on law enforcement, violence prevention and in our kids' schools. We need more teachers in the classroom, not more lawyers in the courtroom. ¹

(1) ¹ According to the Oregon Office of Public Defense Services, in the past decade they have paid out \$93,683,885.99 defending 97.5% of all aggravated murder cases.

To: The Oregon House of Representatives Committee on Judiciary

Mr. Dave Cook, a resident of Bend, Oregon, is unable to attend the Feb. 26, 2013 hearing on HJR 1, but submitted the following statement, which he wishes to be read into the record.

Mr. Cook is now retired from his last position in law enforcement and corrections, as the Director of the Oregon Department of Corrections. Before he was appointed to his DOC position, in 1995, he was the Benton County Sheriff. He served in the Directors post until 2002. Important to his resume is the fact that Mr. Cook had the distasteful position of being in charge when Oregon carried out the only two executions in the past 50 years. His statement reads:

“It is my belief that the death penalty is a failed public policy for three specific reasons. First, few, if any, murderers are deterred by the threat of being prosecuted and sentenced to a penalty of death.

Second, my conversations with both Oregon death row inmates who were executed I believe in their minds the more severe form of punishment would have been a life of confinement and not the act of execution.

Finally, for me this is the most closely held belief moral and civilized societies do not execute convicted inmates when just punishment alternatives exist.”

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To the Oregon House Committee on Judiciary.

My thoughts on the death penalty as follows:

"I am opposed to the death penalty for the following reasons.

FAITH - Love, forgiveness, and reconciliation are the pillars of my Christian faith. The death penalty is not consistent with what I believe.

FISCAL - The cost of implementing the death penalty far exceeds the cost of life imprisonment without the possibility of parole.

FINALITY - Our justice system is not perfect and there is no correcting a mistake with the death penalty.

Life without the possibility of parole is consistent with FAITH, FISCAL and FINALITY and it makes a lot more sense to me."

Retired Oregon Senator Frank Morse, Dist. 8 (Republican)