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ILLINOIS COALITION TO ABOLISH THE DEATH PENALTY

332 S. Michigan Ave. Ste. 500 • Chicago, Illinois 60604 • TEL. (312) 673-3816 • FAX (312) 427-6130

March 10, 2009

Dear Members of the Deficit Reduction Committee:

My name is Jeremy Schroeder and I am the Executive Director of the Illinois Coalition to Abolish the Death Penalty (ICADP). We are a statewide, grassroots membership organization committed to abolishing the death penalty and educating the public about the flaws and injustices in the Illinois capital punishment system. Illinois could save millions of dollars every year by abolishing the death penalty. I will focus on the costs of the death penalty, but I have also included a summary of national trends to abolish the death penalty in Appendix B.

The death penalty needs to be abolished in Illinois because it is cost-prohibitive. We need to use our scarce resources to make sure we are smart on crime by investing in personal and resources that make our communities safer and also care for victims of crime. The state's budget for Fiscal 2008 includes \$16, 332,553 for the Capital Litigation Trust Fund, created by the General Assembly in 2000. Of those funds, \$6,691,200 is allocated directly to Cook County. In the past five fiscal years, the Fund has been allocated just under \$73 million. However, the Fund's expenditures are only part of the true cost of maintaining capital punishment in Illinois – a cost that is difficult to estimate. If the death penalty were abolished, these funds could be used to help fund other services to Illinois.

Death penalty cases are clearly more expensive at every stage of the judicial process than similar non-death cases. Everything that is needed for an ordinary trial is needed for a death penalty case, only more so:

- more pre-trial time will be needed to prepare: cases typically take a year to come to trial;
- more pre-trial motions will be filed and answered;
- more experts will be hired;
- twice as many attorneys will be appointed for the defense, and a comparable team for the prosecution;
- jurors will have to be individually quizzed on their views about the death penalty, and they are more likely to be sequestered;
- two trials instead of one will be conducted: one for guilt and one for punishment;
- in the state of Washington, the extra costs associated with the death penalty cases amounted to \$463,000 per trial; in California, the extra trial costs in capital cases was about \$1.2 million per trial; and
- the trial will be longer: a cost study at Duke University estimated that death penalty trials take 3 to 5 times longer than typical murder trials and then will come a series of appeals during which the inmates are held in the high security of death row.

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Many other states have looked at the costs of their death row and have found it to be much more expensive than the alternatives. Below are some of the findings. I have included parts of the original articles in Appendix A.

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Maryland, Trial costs

- Taxpayers have paid at least \$37.2 million for each of the state's five executions.
- The cost of a death penalty case is \$1.9 million more than the cost of a non-death penalty case.
- At every phase of a case, according to the study, capital murder cases cost more than non-capital murder cases.
- The study found that taxpayers have paid an additional \$71 million for 106 cases where the death penalty was sought but not given.

California, Prison costs

- Additional prison costs of death row vs. life without parole: \$90,000 per inmate.
- Current system cost: \$137 million, Cost of a system without death penalty: \$11.5 million.

Washington, Trial costs

- The cost of a death penalty case is \$470,000 more than the cost of a non-death penalty case.
- On direct appeal, the cost of appellate defense averages \$100,000 more in death penalty cases, than in non-death penalty murder cases.

New Jersey

- The death penalty in New Jersey has cost taxpayers a quarter of a billion more than the costs of sentences of life without parole since 1983.

Tennessee

- Death penalty trials cost an average of 48% more than the average cost of trials in which prosecutors seek life imprisonment.

Kansas

- Death penalty cases are 70% more expensive than comparable non-death penalty cases when comparing the costs from trial through execution.

Indiana

- Total cost of Indiana's death penalty is 38% greater than the total cost of life without parole sentences.

North Carolina

- The death penalty costs North Carolina \$2.16 million more per execution than a non-death penalty murder case with a sentence of life imprisonment.



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Florida

- Florida would save \$51 million each year by punishing all first-degree murderers with life in prison without parole.

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In conclusion, the death penalty is an injustice at any price. There is no safeguard that an innocent person would not be put on death row. It does not deter crime. And for the sake of argument, for those who argue for a death penalty that is “just good enough”, the cost associated with a “safe” death penalty are too high to pay in any economic time and especially not now when all communities are hurting. Thank you very much for your time. Please do not hesitate to contact me with any questions.

Kind regards,

Jeremy Schroeder
ICADP
(312) 213-4142

Appendix A- Articles used for cost analysis

California

“The additional cost of confining an inmate to death row, as compared to the maximum security prisons where those sentenced to life without possibility of parole ordinarily serve their sentences, is \$90,000 per year per inmate. With California’s current death row population of 670, that accounts for \$63.3 million annually.”

Using conservative rough projections, the Commission estimates the annual costs of the present (death penalty) system to be \$137 million per year.

The cost of the present system with reforms recommended by the Commission to ensure a fair process would be \$232.7 million per year.

The cost of a system in which the number of death-eligible crimes was significantly narrowed would be \$130 million per year.

The cost of a system which imposes a maximum penalty of lifetime incarceration instead of the death penalty would be \$11.5 million per year.

Commission on the Fair Administration of Justice, June 30, 2008).

Maryland

MARYLAND New Study Reveals Maryland Pays \$37 Million for One Execution

A new study released by the Urban Institute on March 6, 2008 found that Maryland taxpayers have paid at least \$37.2 million for each of the state’s five executions since 1978 when the state reenacted the death penalty. The study, prepared by the Urban Institute, estimates that the average cost to Maryland taxpayers for reaching a single death sentence is \$3 million - \$1.9 million more than the cost of a non-death penalty case. The study examined 162 capital cases that were prosecuted between 1978 and 1999 and found that seeking the death penalty in those cases cost \$186 million more than what those cases would have cost had the death penalty not been sought. At every phase of a case, according to the study, capital murder cases cost more than non-capital murder cases.

The 106 cases in which a death sentence was sought but not handed down in Maryland cost the state an additional \$71 million. Those costs were incurred simply to seek the death penalty where the ultimate outcome was a life or long-term prison sentence.

(“Death penalty costs Md. more than life term,” by Jennifer McMenamin, The Baltimore Sun, March 6, 2008).

Washington

At the trial level, death penalty cases are estimated to generate roughly \$470,000 in additional costs to the prosecution and defense over the cost of trying the same case as an aggravated murder without the death penalty and costs of \$47,000 to \$70,000 for court personnel.

On direct appeal, the cost of appellate defense averages \$100,000 more in death penalty cases, than in non-death penalty murder cases.

Personal restraint petitions filed in death penalty cases on average cost an additional \$137,000 in public defense costs.

(FINAL REPORT OF THE DEATH PENALTY SUBCOMMITTEE OF THE COMMITTEE ON PUBLIC DEFENSE, Washington State Bar Association, December 2006).

New Jersey

Death Penalty has Cost New Jersey Taxpayers \$253 Million

A New Jersey Policy Perspectives report concluded that the state's death penalty has cost taxpayers \$253 million since 1983, a figure that is over and above the costs that would have been incurred had the state utilized a sentence of life without parole instead of death. The study examined the costs of death penalty cases to prosecutor offices, public defender offices, courts, and correctional facilities. The report's authors said that the cost estimate is "very conservative" because other significant costs uniquely associated with the death penalty were not available. "From a strictly financial perspective, it is hard to reach a conclusion other than this: New Jersey taxpayers over the last 23 years have paid more than a quarter billion dollars on a capital punishment system that has executed no one," the report concluded. Since 1982, there have been 197 capital trials in New Jersey and 60 death sentences, of which 50 were reversed. There have been no executions, and 10 men are housed on the state's death row. Michael Murphy, former Morris County prosecutor, remarked: "If you were to ask me how \$11 million a year could best protect the people of New Jersey, I would tell you by giving the law enforcement community more resources. I'm not interested in hypotheticals or abstractions, I want the tools for law enforcement to do their job, and \$11 million can buy a lot of tools." (See *Newsday*, Nov. 21, 2005; also Press Release, *New Jerseyans for Alternatives to the Death Penalty*, Nov. 21, 2005).

Tennessee

Study Finds Death penalty Costly, Ineffective

A new report released by the Tennessee Comptroller of the Treasury recommended changes to the state's costly death penalty and called into question its effectiveness in preventing crime. The Office of Research noted that it lacked sufficient data to accurately account for the total cost of capital trials, stating that because cost and time records were not maintained, the Office of Research was unable to determine the total, comprehensive cost of the death penalty in Tennessee." Although noting that, "no reliable data exists concerning the cost of prosecution or defense of first-degree murder cases in Tennessee," the report concluded that capital murder trials are longer and more expensive at every step compared to other murder trials. In fact, the available data indicated that in capital trials, taxpayers pay half again as much as murder cases in which prosecutors seek prison terms rather than the death penalty. Findings in the report include the following:

Death penalty trials cost an average of 48% more than the average cost of trials in which prosecutors seek life imprisonment. Tennessee District Attorneys General are not consistent in their pursuit of the death penalty. Surveys and interviews of district attorneys indicate that some prosecutors "use the death penalty as a 'bargaining chip' to secure plea bargains for lesser sentences." Previous research provides no clear indication whether the death penalty acts as a method of crime prevention. The Tennessee Court of Criminal Appeals reversed 29 percent of capital cases on direct appeal. Although any traumatic trial may cause stress and pain for jurors, the victims' family, and the defendant's family, the pressure may be at its peak during death penalty trials. (The Tennessee Comptroller of the Treasury Office of Research's Report, "Tennessee's Death Penalty: Costs and Consequences." July 2004)

Kansas

Study Concludes Death Penalty is Costly Policy

In its review of death penalty expenses, the State of Kansas concluded that capital cases are 70% more expensive than comparable non-death penalty cases. The study counted death penalty case costs through to execution and found that the median death penalty case costs \$1.26 million. Non-death penalty cases were counted through to the end of incarceration and were found to have a median cost of \$740,000. For death penalty cases, the pre-trial and trial level expenses were the most expensive part, 49% of the total cost. The costs of appeals were 29% of the total expense, and the incarceration and execution costs accounted for the remaining 22%. In comparison to non-death penalty cases, the following findings were revealed:

The investigation costs for death-sentence cases were about 3 times greater than for non-death cases.

The trial costs for death cases were about 16 times greater than for non-death cases (\$508,000 for death case; \$32,000 for non-death case).

The appeal costs for death cases were 21 times greater.

The costs of carrying out (i.e. incarceration and/or execution) a death sentence were about half the costs of carrying out a non-death sentence in a comparable case.

Trials involving a death sentence averaged 34 days, including jury selection; non-death trials averaged about 9 days.

(Performance Audit Report: Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections) Read DPIC's Summary of the Kansas Cost Report.

Indiana

Total cost of Indiana's death penalty is 38% greater than the total cost of life without parole sentences. A study by Indiana's Criminal Law Study Commission found this to be true, assuming that 20% of death sentences are overturned and resentenced to life. (Indiana Criminal Law Study Commission, "Commission Report on Capital Sentencing," January 10, 2002)

North Carolina

North Carolina Spends More per Execution than on a Non-death Penalty Murder Case

The most comprehensive death penalty study in the country found that the death penalty costs North Carolina \$2.16 million more per execution than the a non-death penalty murder case with a sentence of life imprisonment (. On a national basis, these figures translate to an extra cost of over \$1 billion spent since 1976 on the death penalty. ("The Costs of Processing Murder Cases in North Carolina" Duke University, May 1993)

Florida

Florida Spends Millions Extra per Year on Death Penalty

Florida would save \$51 million each year by punishing all first-degree murderers with life in prison without parole, according to estimates by the Palm Beach Post. Based on the 44 executions Florida has carried out since 1976, that amounts to an approximate cost of \$24 million for each execution. This finding takes into account the relatively few inmates who are actually executed, as well as the time and effort expended on capital defendants who are tried but convicted of a lesser murder charge, and those whose death sentences are overturned on appeal. ("The High Price of Killing Killers," Palm Beach Post, January 4, 2000)

Florida Spent Average of \$3.2 Million per Execution from 1973 to 1988

During that time period, Florida spent an estimated \$57 million on the death penalty to achieve 18 executions. ("Bottom Line: Life in Prison One-Sixth as Expensive," Miami Herald, July 10, 1988)

Colorado

A bill is being introduced in Colorado to end the state's death penalty and to use the resultant savings to investigate the state's more than 1,300 unsolved crimes. More than 500 residents who have lost friends and family to unsolved murders are pushing for the bill, which is expected to be introduced by House Majority Leader Paul Weissmann. The proponents estimate that 3 in 10 killers in the state walk free, and catching more killers would be a more effective deterrent than capital punishment and a better use of state funds. Weissman says abolishing capital punishment could save the state \$2 million a year and local authorities another \$2.5 million. "Any other program that cost that much and was used so little would be the first to go," said Weissman, whose 2007 version of the bill died narrowly on the House floor. Howard Morton, of Families of Homicide Victims and Missing Persons, said, "Our position is very simple. Why talk about penalties when we haven't even caught [them]? Let's do first things first. These murderers are living in our neighborhoods."

The last execution in Colorado was in 1997, and was the only execution in more than four decades.

(J. Fender, "Bill targets Colorado's death penalty," The Denver Post, January 29, 2009).

Appendix B – National Death Penalty Trends

Death Penalty Usage - Developments

By just about every measure, the death penalty in the U.S. appears to be on the decline. Executions, which had been on hold due to a lethal injection challenge before the U.S. Supreme Court, resumed in 2008. However, despite the Court's decision, which lifted what was essentially a national moratorium, in most states, executions have been slow to resume. There were 37 executions in 2008, a 14 year low.¹ The vast majority of those executions took place in the South, with **Texas** accounting for almost half.

Meanwhile, stays of executions were frequent as Courts continued to address legal issues involving mental illness and other mitigating factors, adequacy of counsel, lethal injection challenges, and other issues unique to capital punishment.

New death sentences, which have been declining since 2000, continued a downward trend in 2008.² This multi-year decline in death sentencing is seen in every region of the country and even in the states with recent histories of high usage. In **North Carolina**, just one individual was sentenced to death in 2008. To provide a comparison point, in 1996 there were thirty-four death sentences in that state.³ **Texas** has also seen a significant drop in death sentences. Eleven persons were sentenced to death by Texas juries last year, the lowest number since 1976 and since a marked decline in new death sentences began there in 2005.⁴

In the policy arena, two states – **New York** and **New Jersey** - recently abandoned the death penalty, choosing instead life without possibility of parole. Several states created commissions in 2008 to study the death penalty. **Maryland's** commission recommended that the state repeal its death penalty law. The Maryland Legislature is expected to take up a repeal bill in the coming weeks. In **Tennessee**, a commission recommended a number of reforms to try to improve the death penalty system, which has been criticized for failing to provide adequate legal representation for condemned inmates who could not afford their own lawyers.⁵

A number of commissions and courts highlighted the death penalty's high cost as a problem area. In **California**, a commission found that it cost the state \$138 million each year to maintain its death penalty system. In **New Mexico**, the state Supreme Court ruled that death sentences couldn't be pursued unless the Legislature

¹ "2008 Decline in U.S. Executions Has States Reflecting on Capital Punishment," Kansas City Star, January 4, 2009

² Ibid.

³ "In N.C., Death Penalty Gets Rarer," News Observer, December 30, 2008

⁴ "Is Texas Changing It's Mind About the Death Penalty?," Time Magazine, December 23 2008

⁵ Associated Press, "[Committee offers plan to improve death penalty system](#)," December 9, 2008

provided adequate funding for defense services for indigent defendants in capital cases. **Utah's** Supreme Court also weighed in on the necessity of adequate counsel for defendants facing death. In a unanimous decision, the Utah Justices warned that the state could see death sentences reversed because low salaries have reduced the numbers of attorneys willing and able to take on capital appeals, which are very complex.⁶

The decline in death penalty usage appears to be caused by a number of factors, including awareness on the part of the public that mistakes have been made that have resulted in the sentencing of innocent individuals to death.⁷ Since 1973, 130 individuals in twenty-six states have been exonerated of the crimes for which they were sentenced to die.⁸ A review of these cases reveals a number of factors contributing to exonerations, for example, jailhouse snitches and mistaken eyewitnesses.

Concerns about accuracy in death sentencing may be contributing to what appears to be growing juror reluctance to impose death. Over a six month period from December 2007 to May 2008, **North Carolina** saw three death row inmates exonerated based on new evidence. Problems in the cases included withheld evidence, false testimony, and ineffective assistance of counsel. The media coverage of these exonerations may have influenced jurors, who in 2008 rejected death in twelve of thirteen capital trials.⁹ **California**, which has exonerated three death row inmates, and **Florida**, which has had twenty-two exonerations, are among the states that have experienced the greatest declines in death sentencing over the last decade

Whatever the reasons behind it, the trend of jurors increasingly rejecting death is notable because the law says only those willing to sentence someone to die are qualified to serve on a capital jury. This process, known as "death-qualifying" a jury, has become more costly and challenging as attitudes toward capital punishment have shifted, in turn making it harder for judges to find a jury willing to sit on a death penalty case. With national and state public opinion polls registering drops in support for capital punishment - possibly a result of influential groups such as the U.S. Catholic Conference of Bishops increasing efforts to oppose the death penalty -

⁶ Reversals, which are common in capital cases, do not always reflect the guilt or innocence of the offender. In most cases, they are caused by a serious legal error. The majority of cases reversed on appeal result in a new sentence of something less than death. Reversals directly impact the stakeholders in the justice process, including the families of murder victims, who must endure resulting delays and resentencing.

⁷ 63% of voters surveyed in a May 2006 Gallop poll said they believe that an innocent person has been executed in the past five years

⁸ List maintained by the Death Penalty Information Center, Washington, DC, www.deathpenaltyinfo.org

⁹ "In N.C., Death Penalty Gets Rarer," News Observer, December 30, 2008

the task of finding death qualified jurors may become even more difficult in the future.¹⁰

Another possible reason for the decline in the use of the death penalty is that prosecutors appear to be seeking it less often. Tom Horner, president of the **North Carolina** Conference of District Attorneys, attributed decisions not to seek death to frustration over delays caused by lethal injection challenges, which remain unsettled in some states, and also to the time and expense involved in capital cases.¹¹

Prosecutors in **Ohio** are also seeking death less often. An Associated Press survey of Ohio prosecutors found two reasons for this change: the passage of a 2005 law that allows prosecutors to pursue a life without parole sentence without first seeking the death penalty, and the death penalty's cost. The AP estimated the extra county costs involved at the trial level at about \$100,000 per capital trial, no matter how large or small the county or budget.¹²

Impact on States - Financial

The financial costs associated with capital punishment have always been high and this is unlikely to change, even as usage declines.¹³ With the recession, few county prosecutors and other officials responsible for government expenditures can or should ignore its fiscal impact on their budgets, especially as the economy contracts and tough spending choices must be made.

Media reports indicate that some states and counties are struggling to meet court orders that require monies that aren't there. The state of **New Mexico** was forced to drop its pursuit of the death penalty against two defendants because the state legislature did not provide the money necessary for adequate representation of the defendants. In **Louisiana**, the Orleans Parish District Attorney's office may file for bankruptcy because of a 14 million damages award, recently upheld on appeal, stemming from the office's misconduct in a death penalty case that ultimately ended in an exoneration of a man who had spent fourteen years on death row.¹⁴

¹⁰ The United States Conference of Catholic Bishops Campaign to End Capital Punishment in the United States, with polling at www.ccedp.org

¹¹ "In N.C., Death Penalty Gets Rarer," News Observer, December 30, 2008

¹² "Ohio prosecutors using new life without parole option," Akron Beacon Journal, June 22, 2008

¹³ A March 2007 study by the Urban Institute found that Maryland, a relatively low-usage state, paid at least \$37.2 million for each of the state's five executions since 1978 when the state reenacted the death penalty. The report also found that obtaining a death sentence in Maryland costs approximately \$3 million for each sentence, or \$1.9 million more than the cost of a non-death penalty case.

¹⁴ "[Orleans Parish DA's Office Faces Bankruptcy](#)," MSNBC.com, January 8, 2009

Fiscal concerns are leading some state leaders to question whether expenditures on the death penalty are the best use of scarce resources. Norm Stamper, a 35-year veteran police officer from San Diego, **California** would rather see funds now spent on the death penalty instead spent on “after-school programs, mental health care, drug and alcohol treatment, education, more crime labs and new technologies, or on hiring more police officers...”¹⁵

Impact on States – Murder Victims Families

For many victims’ families, the complex appeals, which are required by the U.S. Supreme Court, and the resulting delays, reversals, and stays of execution, are reason to reject capital punishment in favor of sentences of life in prison. During **New Jersey’s** abolition bill hearings, sixty family members who have lost a close relative to murder, including some who had been through the death penalty process, signed onto a letter to the New Jersey Death Penalty Study Commission supporting repeal of the death penalty law. The letter stated, “To be meaningful, justice should be swift and sure. The death penalty is neither.”¹⁶

In recent hearings in **Maryland**, Kathy Garcia, a veteran victims’ advocate whose nephew was murdered twenty years ago, testified about the impact of the death penalty’s cumbersome process on survivors. In addition to the long delays, which she argued are damaging because they prolong the survivors connection to the criminal justice system and thus to the offender, she explained that the death penalty can cause divisions in families that include members with varying views on capital punishment. Noting that her experience included assisting families that have been through the capital process, Garcia said, “I’ve watched too many families go through this to make me believe the system will ever work.”¹⁷

Impact on States – Concern about Fairness

According to the latest Gallup national poll, conducted in October 2008, 54% of Americans believe that the death penalty is applied fairly in this county and 38% think it is applied unfairly. Questions of who gets death have led some states to conduct studies to determine how capital charging decisions are made. Most of these studies have revealed geographic disparities in the application of the death penalty, and some suggest that the system is also racially skewed.

A 2007 report from the **Maryland** Commission on Capital Punishment, chaired by former U.S. Attorney General Benjamin R. Civiletti, found that death sentences are often tied to the race of the defendant and victim or the location where the murder occurred. For example,

¹⁵ “Death penalty wastes money, while failing to reduce crime,” The Mercury News, Nov. 19, 2007

¹⁶ New Jersey Death Penalty Study Commission transcripts at www.njleg.state.nj.us/legislativepub/pubhearings2006.asp#DPSC

¹⁷ “[Murder victims' families say death penalty exacts toll on their lives](#),” Catholic News Service, March 12, 2008

among Maryland cases where the death penalty is an option, blacks who kill whites are two and a half times more likely to be sentenced to death than whites who kill whites, and three and a half times more likely than blacks who kill blacks.¹⁸

A 2008 study of the death penalty in **Arkansas** also showed racial patterns in sentencing. The study examined 124 murder cases filed in one district from 1990 to 2005. After adjusting for a variety of factors, researchers found that black people who killed white victims were most likely to be charged with capital murder and sentenced to death. Of the 66 death-eligible cases studied, blacks were defendants in only 38 cases, but nine of the 10 defendants for whom prosecutors sought a death sentence were black. Similarly, whites were victims in only 35 of the cases, but they were the victims in seven of the 10 cases in which the death penalty was sought.¹⁹

Death penalty proponents argue that these kinds of racially disparate outcomes are a result of “geographic disparity,” or differences in charging decisions from county to county. Opponents argue that geographic disparity is a problem in and of itself. They further argue that there is evidence that racial bias is a problem even when accounting for geography. Regardless, questions about how the death penalty is applied have received and will likely continue to receive quite a bit of attention in death penalty states.

Summary

The death penalty is in decline across the U.S. Death sentences and executions are down. Several states are reexamining their death penalty laws. Others continue to grapple with problems stemming from lingering legal uncertainty over lethal injection and other issues, such as mental illness. New York and New Jersey recently abandoned capital punishment in favor of life without parole. Maryland is considering a similar measure. This retreat appears to be driven by a number of factors, including awareness of mistakes that have sent innocent persons to death rows, questions of whether the death penalty is fairly applied, fiscal concerns about whether it is the best use of law enforcement dollars, and concerns over delays and complications unique to capital punishment.

¹⁸ Final Report, Maryland Commission on Capital Punishment, <http://www.goccp.org/capital-punishment/>

¹⁹ “[Study indicates pattern in sentences](#),” Arkansas Democrat-Gazette, September 8, 2008