

ILLINOIS ABOLISHES DEATH PENALTY

By: Joseph Dole

In a hard-fought victory for opponents of the death penalty, Governor Pat Quinn signed a bill into law abolishing the death penalty in Illinois, making that state the 16th in the nation (plus the District of Columbia) to prohibit state-sanctioned homicide.

The road to abolishing the death penalty in Illinois has been long and rocky. Even today, polls show a majority of people still favor capital punishment.

In 1972 the United States Supreme Court ruled that the death penalty constituted cruel and unusual punishment and therefore was unconstitutional barring executions nationwide. Just four years later a slightly different roster of justices on the same court reversed that ruling, letting the states make the determination for themselves.¹

A number of states had outlawed capital punishment prior to either of the above decisions. Michigan, for instance, was the first. It banned executions 163 years ago.² By 1977 Illinois had already executed 90 people. Between 1977 and 2000 the state's body count rose by another 12 dozen. Over the last decade though a number of factors changed which made abolishment possible.

First, is the horrendous statistic that since 1977 more people who were on death row have been exonerated (20), than were actually executed (12). It doesn't inspire a lot of confidence in the system when it turns out that more people were wrongfully convicted than were actually executed since the death penalty was reinstated.

Second, with new technology like DNA testing the public has seen case after case that proves beyond a shadow of a doubt that people are routinely convicted of crimes they didn't commit. Instances of false confessions being tortured out of innocent suspects by police who are out of control litter the media with devastating regularity. Nobody believes the defendant when he or she claims the confession was coerced. However, with DNA testing society has seen that this is something that actually does occur and all too frequently.

One of the most infamous examples was Officer Jon Burge. As reported in Playboy Magazine, "more than 100 prisoners, including 10 men on death row, four of whom have since been pardoned, were identified as possible victims of torture committed by Burge or his subordinates. A total of 13 Burge victims have won early release, all having spent decades behind bars as the result of coerced confessions".³

In the past two decades alone 17 people in the U.S. have been exonerated by DNA testing who had been sentenced to die. Hundreds more who hadn't received the ultimate penalty have likewise been cleared through DNA testing in that time.⁴

Third, few people still believe that the death penalty acts to deter people from committing a murder. The simple fact that most murders are crimes of passion where people rarely take time to consider the consequences of their actions, let alone whether they're even aware of what the penalty for murder is in any given state under those particular circumstances should show that the argument that the death penalty acts as a deterrent highly unlikely. Add to it the fact that most offenders are so young that the region of the brain which processes risk versus reward, long-term consequences, etc. hasn't fully developed yet, likewise disputes such a theory. If the death penalty were a deterrent, one would think that states or countries with the death penalty would have lower murder rates than those without it. This is rarely ever the case though.⁵ The Economist magazine raises another good point:

"The chance of being executed in America is so remote that it cannot plausibly be a significant deterrent,...[e]ven if you are on death row... the chance of being put to death in any given year is only about 2%. Members of [one] crack gang... had a 7%-a-year chance of being murdered. For them death row would be safer than the street."⁶

This probably explains why the Chicago Tribune reported that "[p]olice chiefs ranked the death penalty last in their priorities for effective crime reduction [and] do not believe that the death penalty acts as a deterrent to murder."⁷

Also, while there is little evidence that the death penalty deters anyone from murdering innocent people, there is evidence that the death penalty is used to murder innocent people (See Joe Arridy pardon discussion below for instance).

Fourth, the above facts helped to bring about a change in public opinion. The number of people who favor the death penalty for those convicted of murder is slowly declining. The spread of Life Without Parole (LWOP) as an alternative is a major factor. A Gallop poll last October found that while 64% of Americans favor the death penalty and only 29% oppose it, the numbers were 48% and 46% respectively when LWOP was offered as an alternative.⁸ A Click poll conducted by the Chicago Tribune in 2007 found even less support for the death penalty (43%) when LWOP was an alternative.⁹

This has huge political implications. The St. Louis Beacon reported that "recent polls indicate that a majority of voters in death penalty states are willing to support candidates who want to repeal capital punishment" as long as the defendant received LWOP instead.¹⁰ Politicians now have a breather from the threat of being labeled "soft on crime" anytime they fail to vociferously support the death penalty. Even "jurors and prosecutors... are more apprehensive about killing the innocent and less fearful of crime" according to Newsweek.¹¹

Fifth, since the public is now more forgiving of politicians on the issues of crime and punishment, this has allowed Governors to exercise their clemency power more freely. They can now decide with their consciences

rather than by purely political machinations or out of fear. Governors Ryan and Quinn are two examples as will be seen below.

Governors from other states as well are increasingly granting clemency to death row residents, something that was nearly unheard of in the 1990's. In the month of January of this year alone we saw condemned men's lives spared via clemency by Democratic governors in both Tennessee and Missouri. Also in what can only be described as the epitome of "too little, too late," then governor of Colorado, Bill Ritter, another Democrat, posthumously granted a pardon to Joe Arridy who had been murdered by that state in 1936 after being falsely convicted of murder.¹²

Sixth, a number of U.S. Supreme Court cases have kept the issue in the media over the years which keeps the debate alive, and a few cases have resulted in restrictions on what types of offenders are eligible for the death penalty, which crimes can carry such a punishment, and one effectively placed a moratorium while the nation awaited the decision of the court.

There has been an ongoing debate about whether the death penalty constitutes "cruel and unusual punishment" in violation of the Eighth Amendment to the U.S. Constitution. In 1972 the U.S. Supreme Court said it did, then in 1976 said it didn't. The debate has since moved on to what types of execution are cruel and unusual.

In 2002 the Court effectively abolished the death penalty for offenders who are mentally disabled¹³, and in 2005 for juveniles¹⁴, which overturned the Court's prior ruling in 1989 which permitted executing 16 and 17 year olds¹⁵. In 2008 the court "threw out a law allowing those convicted of child rape to be executed."¹⁶

One of the most drawn out battles of late surrounds the question of whether lethal injection constitutes cruel and unusual punishment. Long-considered the most "humane" form of execution, lethal injection no longer seems like a peaceful passing into death as it does a botched back-alley abortion.

Reputable doctors and physicians are rarely ever willing to take part, believing it violates their Hippocratic oath to "do no harm". Therefore the job of administering the liquid death often falls to nervous, inexperienced guards who can't find a vein and end up botching the job.¹⁷ In Florida, for instance, the executioner pumped the three drug cocktail into a man's muscle causing him to suffer a 34-minute long, agonizing death.¹⁸

The U.S. Supreme Court considered whether lethal injection constitutes "cruel and unusual" punishment when it agreed to hear the case of Baze v. Rees¹⁹ on September 25, 2002. This "imposed a de facto moratorium on lethal injection."²⁰ States didn't start executing people by lethal injection again until 2008 when the Court decided the case, concluding that there was no Eighth Amendment violation.²¹

Now states are running into a new problem with lethal injection - where to get the drugs. Few companies produce sodium thiopental, one of the three drugs used. The ones that do make it are increasingly reluctant to sell it for use in executions. A plant that makes sodium thiopental in Illinois is

owned by an Italian company and “has decided that it no longer wants it to be used in executions”, causing a shortage nationwide.²² (The European Union prohibits capital punishment). This has caused numerous problems. The Drug Enforcement Agency recently seized the thiopental sodium that Georgia imported from England due to the shortage. Georgia is accused of breaking federal law by importing the drug because the state failed to register as an importer of a controlled substance.²³ In Texas the state has decided to use the same sedative used to euthanize animals as part of its cocktail. Instead of thiopental sodium they are now going to use pentobarbital like Ohio and Oklahoma. Lundbeck Inc., the company that produces pentobarbital used by the three states mentioned above, told the Wall Street journal that it “was investigating what it could do to stop distribution to prisons for use in executions.”²⁴

All of the above factors mean that less people are being executed, and more states are considering abolishment. Since 1976 New York, New Jersey, New Mexico, and now Illinois have joined the 12 states and District of Columbia that had already abolished the death penalty.²⁵

Unfortunately, the premier argument that convinced Illinois’ lawmakers to abolish the death penalty wasn’t the fact that it doesn’t act as a deterrent as its proponents claim; nor was it the fact that innocent people were being sentenced to die; nor was it that it is a barbaric punishment that should be abandoned by a civilized people. No, the argument that seems to have carried the day was the one that is indisputable; the one that was largely credited for turning New Jersey and New Mexico against it; the one that is gaining momentum in other states as well. It’s that the death penalty is just downright unaffordable.

The majority of the states have been in dire economic straits for years now. Few more so than Illinois which increased state income taxes by an unprecedented 67% this year to try to mend its \$15 billion budget deficit.

As states realize that the death penalty offers few if any benefits other than revenge, they are reconsidering the astronomical amounts of money spent to keep it as an option. Once one considers the financial costs during times of budget deficits another realization hits; priorities need to be set, so if a state wants to continue paying for the death penalty, something else isn’t getting paid for. As the St. Louis Beacon notes, the money “has to come from somewhere, and that somewhere includes spending on criminal justice in other areas (prisons and jails, police officers).”²⁶ Not only do abolitionists see the death penalty as a waste of money, but even the police “rank it as one of the most inefficient uses of taxpayer dollars in fighting crime” according to the Chicago Tribune.²⁷

The New Mexico Daily Lobo reported that “cost is the main reason many states are re-evaluating how they address violent crime” and even “[c]onservative states Montana and Kansas are on the brink of abolishing the death penalty.”²⁸ Prior to New Mexico abolishing the death penalty, The Economist reported that “Colorado, Kansas, New Mexico, and New

Hampshire, have shifted the debate about capital punishment, at least in part, from morality to cost.”²⁹ The article cited a study by The Urban Institute which found that in Maryland “a case resulting in a death sentence cost... almost 2 [million] more than when the death penalty wasn’t sought.”³⁰ North Carolina arrived at the same \$2 million premium.³¹ The New Jersey Policy Perspective found that the state spent \$11 million per year on the death penalty from 1982 until abolishment without ever actually executing anyone.³²

In Colorado, State Representative Paul Weissman proposed abolishing the death penalty and using the money saved to investigate unsolved murders.³³ As the father of a victim of one of those unsolved murders told *The Economist*, he “wants the son of a bitch who did it to die, [b]ut you’ve got to catch the son of a bitch. That’s more important.”³⁴ The state can’t kill those it can’t catch. Resources being wasted on the death penalty denies police adequate resources to investigate the crime and identify and arrest the offender.

The governor of Maryland, Martin O’Malley, argued in 2007 that the money could be better spent on providing drug treatment or extra police, which actually prevent crime.³⁵ Such an argument has long been a mainstay of liberals, one that other politicians were reluctant to voice out of fear of being labeled “soft on crime”. Now even Republicans are turning away from the “tough” towards the “soft”, but are repackaging it as being “Right on Crime”.³⁶

The costs of the death penalty in Illinois are manifold. The *Chicago Tribune*, citing the Illinois State Treasurer’s website, stated that the “Capital Litigation Trust Fund pays between \$500,000 and \$700,000 in an average death-penalty case”, which so far has totaled \$54 million alone.³⁷ This is just a small component of the cost of maintaining the death penalty system. When the rest of the costs are factored in it “translates to hundreds of millions of dollars”.³⁸ Even this number though is deceiving because it fails to consider the costs of its dysfunction as well. It also costs the state money to both defend against and settle the numerous cases of wrongful conviction, such as the “Ford Heights Five” who received a \$36 million settlement after their wrongful conviction.³⁹

In 2000, then Illinois Governor George Ryan, a Republican, was so unnerved that an innocent man was on the brink of being executed, and that more people who had been sent to death row since reinstatement had been exonerated (13) than executed (12), that he declared a moratorium on the death penalty in Illinois.⁴⁰ A couple years later he granted clemency to all those on death row (159 people), commuting their sentences to Life Without Parole (LWOP).⁴¹ Gov. Ryan called for reforms to Illinois’ Death Penalty system as well.

No Illinois governor since then has been sufficiently satisfied with those reforms to lift the moratorium. Since 2000 there have been several bills filed to abolish the death penalty in Illinois, but until recently none have gained passage in both houses of the Illinois General Assembly.

In November of 2010 Republicans made significant gains in the Illinois elections and a bill to abolish the death penalty looked even less likely to pass the more Republican General Assembly that would take over on January 12th. Legislators therefore had to act quickly before the start of the 97th General Assembly session.

What began as a bill concerning training and educational qualifications for probation officers, Senate Bill 3539 was completely stripped of any of the original text and rewritten as a bill solely to abolish the death penalty during the lame duck session. The overhauling amendment was filed by Illinois Representative Karen Yarbrough on November 17th, 2010. The next day it picked up 24 cosponsors and by Nov. 30th had passed out of committee by a 4 to 3 vote. On January 6th it passed the Illinois House by a vote of 60-54. Five days later on the 11th, it passed the Illinois Senate (on the last day of the lame duck session) by a vote of 32-25 with two abstentions. It was then sent to the governor on Jan. 18th.⁴²

When it arrived on Gov. Quinn's desk, he announced that he would take the next couple of months to decide whether or not he would sign it into law, as he wished to hear from people on both sides of the argument before rendering a decision. Bill Richardson did something similar when, as governor of New Mexico, he signed the bill repealing New Mexico's death penalty. Richardson only took a week-end to make his decision, but after receiving "12,000 responses by phone, e-mail, and visits, with more than three-fourths in favor of repeal,"⁴³ he made the "most difficult decision in [his] political life."⁴⁴ Richardson was one of those pressuring Gov. Quinn to repeal Illinois' death penalty, even writing a letter to the editor of the Chicago Tribune to assure him it was okay to renege on his long history of support for capital punishment, as Richardson himself had.

Other opponents of capital punishment also pressured Quinn. Even new Lieutenant Governor Sheila Simon wrote to him "urging him to abolish capital punishment".⁴⁵ Ex-judge and current John Marshall Law School adjunct professor Sheila M Murphy wrote on chicagotribune.com that "even the U. S. Supreme Court said that executing the innocent is 'inevitable'."⁴⁶ Death penalty opponents from as far away as South Africa, such as Archbishop Desmond Tutu, even wrote supporting abolishment.⁴⁷ Governor Quinn seemingly came to the same conclusion. Although he had previously claimed to both support the decade-long moratorium and capital punishment "when applied carefully and fairly,"⁴⁸ on March 9th, 2011 Quinn concluded that it is "not possible to create a mistake-free system" and therefore signed SB3539 into law. The bill states "the death penalty is abolished and a sentence of death may not be imposed", effective July 1, 2011.⁴⁹ Echoing bill Richardson, Gov. Quinn claimed it was the "hardest decision [he's] ever made as governor".

There was still the issue of the 15 people currently awaiting execution on Illinois' death row. On March 9th the Coliseum in Rome must have been lit up bright, as according to ex-Senator Russ Feingold in the latest International Cure Newsletter (undated), the Pope requests that any time there is a stay

of execution that the Coliseum, which used to hold public executions, be lit up in celebration of the life being spared. Gov. Quinn commuted each of the 15 sentences to a term of LWOP. Therefore as of today the only way someone will be executed by the state of Illinois in the future is if: 1) they are currently awaiting trial and are sentenced to death before July 1st of this year (even then the governor would most likely commute their sentence as well); or 2) the state reenacts death penalty legislation in the future.

The latter of the above two possibilities is not entirely out of the question. New Mexico's new governor, Susana Martinez, "told a packed House chamber that she will work to reinstate the death penalty".⁵⁰ Illinois Republicans aren't waiting for a new governor, minutes after Quinn made his announcement, they were promising legislation to reinstate the death penalty as well. So it seems that, although the battle to abolish the death penalty in Illinois has ended, the battle to reinstate it has already begun.

In Illinois many defendants in murder trials fall under a law which allows for only one of two punishments - LWOP or death (this law will have to be amended). Other defendants were eligible for the death penalty but ended up receiving LWOP or a number of years, many of those sentences are so long the defendant is unable to outlive their outdate. All of these defendants traversed the same dysfunctional system. As has been shown above, these trials were so procedurally helter-skelter that they resulted in more death row exonerations than executions. But those who were actually sentenced to death make up only a small fraction of those who were convicted in cases where the death penalty was sought. More than 1,500 people went through this same system and ended up with LWOP. A similar number of people went through it and received virtual life sentences. Yet the virtual lifers and those with LWOP did not receive the heightened scrutiny on appeal afforded to those who received the death penalty.

If so many who were on death row were exonerated (20 since 1987) due to wrongful convictions, it is only logical that many more are serving their entire lives in prison after wrongful convictions. So the fight for the justice finally obtained by those 20 continues for many more, but for them it is an even greater uphill battle.

Some may claim that the added safeguards and greater scrutiny on appeal are unnecessary because those with life sentences aren't facing death, but they are wrong. There is no parole in Illinois. They are living what is now commonly called "living death".⁵¹ They will never get out. They aren't sentenced to die by lethal injection, but rather by incarceration. Bill Richardson was able to overcome his qualms and abolish the death penalty because he viewed LWOP as being possibly "worse than death".⁵²

When Gov. Quinn abolished the death penalty a prosecutor in downstate Illinois claimed that the loss of the death penalty denied him a valuable tool to scare people into pleading guilty in exchange for a LWOP sentence. He seemingly doesn't realize what many former death penalty

prosecutors already have – “that threat of death is used as a coercive tool to get guilty pleas for capital crimes, leading to false life-sentence convictions”.⁵³ The fight for justice continues. People will still have false confessions coerced out of them resulting in false convictions, but at least they can no longer be scared with death into falsely pleading guilty.

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