Death Penalty Reform

Dozens of innocent people have been sentenced to death in recent years. States have options to address this injustice: reduce the risk that innocent persons may be executed by providing a DNA safeguard in capital cases, and/or suspend the operation of the death penalty while a commission studies its fairness.

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Summary

- **In recent years, dozens of innocent people have been sentenced to death. Between 1977 and 2003, more than 110 people were released from death rows in at least 25 states because of significant evidence of innocence.**
- **Since 1976, when the U.S. Supreme Court reinstated the death penalty, innocence and wrongful convictions have required the release of one person from death row for every seven executed.**
- **From 1900-91, at least 400 innocent people were placed on death row, and at least 23 of them were executed.**
- **Minority defendants are more frequently convicted in capital cases and are executed in disproportionate numbers.**
- **Two states have implemented death penalty moratoriums.**
- **In 2003, eight states enacted laws guaranteeing DNA testing.**
- **While the public has supported capital punishment in theory, Americans now object to it in practice.**

In recent years, dozens of innocent people have been sentenced to death. Between 1977 and 2003, more than 110 people were released from death rows in at least 25 states because of significant evidence of innocence.[1]

For example:

■ In 2003, a jury took less than an hour to acquit John Thompson at his retrial for a New Orleans murder. Thompson was sentenced to death in 1985. Just five weeks before his scheduled execution, Thompson's attorney discovered blood analysis evidence that had been withheld by prosecutors, which ultimately led to the retrial and acquittal.

■ In 2003, Florida death row inmate Rudolph Holton was released from prison after spending 16 years on death row. His release followed DNA tests that contradicted a prosecution witness, and a circuit court ruling that the state had withheld evidence that pointed to another perpetrator.

■ In 2002, Ray Krone was released from death row by the state of Arizona after DNA tests confirmed his innocence.

■ In 2001, charges were dropped against Charles Irvin Fain, a Vietnam veteran who spent over 18 years on Idaho's death row. He was released after new forensic tests contradicted an expert's testimony at trial that hairs found on the victim's body were Fain's.

■ In 2000, Virginia Governor James Gilmore pardoned Earl Washington after DNA testing found no trace of him at the scene of the murder for which he was convicted. "We came breathtakingly close to executing a man who wasn't guilty of the crime," said State Senator Janet Howell.

Since 1976, when the U.S. Supreme Court reinstated the death penalty, innocence and wrongful convictions have required the release of one person from death row for every seven executed.

The releases were not due to a system that works; rather, many of the released proved their innocence only thanks to unpaid lawyers and activists.

At least 23 innocent people were executed in the United States during the 20th century.

There were more than 400 known cases of wrongful conviction for capital offenses in the U.S. between 1900 and 1991, according to Amnesty International. Most of the convictions were upheld on appeal, and evidence proving defendants' innocence emerged years after sentencing. But at least 23 individuals were executed before exonerating evidence surfaced.

Minority defendants are more frequently convicted in capital cases and are executed in disproportionate numbers.

A study by two of the country's foremost researchers on race and capital punishment, law professor David Baldus and statistician George Woodworth, revealed that the odds of receiving a death sentence are nearly four times higher if the defendant is black. These results were obtained after analyzing and controlling for case differences, such as the severity of the crime and the background of the defendant.

Two states have implemented death penalty moratoriums.

Illinois Governor George Ryan paved the way for much of the reform work in the states. When he implemented the first statewide moratorium on executions in January 2000, after Illinois had executed 12 men and freed 13 innocent men from death row since reinstating the death penalty in 1976. In 2002, Maryland Governor Parris Glendening followed suit, implementing a moratorium so that a study could be conducted on the fairness of sentencing practices with a specific focus on racial disparities. Despite the study's conclusion that Maryland's death penalty system is clouded by racial and geographic bias, Glendening's successor lifted the moratorium, and executions may resume in 2004.

In 2003, eight states enacted laws to guarantee DNA testing.

Implementing a variety of procedures, CO, CT, GA, IL, MT, NV, NM and OH acted in 2003 to allow some inmates access to DNA testing in order to establish their innocence. AR, FL, MD, PA, TX and VA enacted similar laws in 2001-02.

The Innocence Protection Act would reduce the risk that innocent persons are executed.

It would provide a safeguard in capital punishment cases by:

■ Allowing prisoners on death row to request DNA testing of evidence in the government's possession.

■ Ensuring that wrongfully convicted persons have an opportunity to establish their innocence through DNA testing, and requiring the preservation of DNA evidence.

The Death Penalty Moratorium Act would suspend executions while a commission studies the system's fairness.

Specifically, it would:

■ Appoint a commission to study all aspects of the state's death penalty. The commission would make a preliminary report within one year, and a final report within two years.

■ Place a moratorium on executions until the commission reports its findings and the legislature responds to them.

While the public has supported capital punishment in theory, Americans now object to it in practice.

■ Americans believe innocent people have been executed. A May 2003 Gallup poll found that 73 percent of Americans believe that an innocent person has been executed within the past five years. Only 22 percent believe no wrongful execution has happened.

■ Americans strongly support a suspension of the death penalty. A March 2001 Hart Research poll found that 72 percent of the public favored "a suspension of the death penalty until questions about its fairness can be studied." Only 20 percent opposed.

■ The same poll reported that 91 percent agreed states should "give convicted persons on death row the opportunity to have DNA tests conducted in order to prove their innocence." Only two percent disagreed. Americans overwhelmingly believe death row inmates should have the right to use DNA testing to prove their innocence.

Endnotes

[1] Death Penalty Information Center, "Innocence and the Death Penalty," 2003.

Death Penalty Reform

For more information...

Center for Policy Alternatives
1875 Connecticut Avenue NW, Suite 710
Washington, DC 20009
202-387-6030
www.stateaction.org

American Bar Association
541 N. Fairbanks Court
Chicago, IL 60611
312-988-5522
www.abanet.org

American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2500
www.aclu.org

Amnesty International USA
Program to Abolish the Death Penalty
600 Pennsylvania Avenue SE, 5th Floor
Washington, DC 20003
202-544-0200
www.amnestyusa.org/abolish

Campaign for Criminal Justice Reform
1725 Eye Street NW, 4th Floor
Washington, DC 20006
202-638-5855
www.cjreform.org

Citizens United for Alternatives to the Death Penalty
PMB 297, 177 U.S. Hwy #1
Tequesta, FL 33469
800-973-6548
www.cuadp.org

Death Penalty Focus
870 Market Street, Suite 859
San Francisco, CA 94102
888-2-Abolish (888-222-6547)
415-243-0143
www.deathpenalty.org

Death Penalty Information Center
1320 18th Street NW, 5th Floor
Washington, DC 20036
202-293-6970
www.deathpenaltyinfo.org

Equal Justice USA/Moratorium Now!
P.O. Box 5206
Hyattsville, MD 20782
301-699-0042
www.quixote.org/ej

Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118
212-290-4700
www.hrw.org

Murder Victims' Families for Reconciliation
2161 Massachusetts Avenue
Cambridge, MA 02140
617-868-0007
www.mvfr.org

National Coalition to Abolish the Death Penalty
920 Pennsylvania Avenue SE
Washington, DC 20003
888-286-2237
www.ncadp.org

Southern Center for Human Rights
83 Poplar Street NW
Atlanta, GA 30303
404-688-1202
www.schr.org

Innocence Protection Act

SECTION 1. SHORT TITLE

This Act shall be called the "Innocence Protection Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS - The legislature finds that:
1. Over the past decade, deoxyribonucleic acid testing (referred to in this section as "DNA testing") has emerged as the most reliable forensic technique for identifying criminals when biological materials are left at a crime scene.
2. Because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a judge or jury.
3. While DNA testing is increasingly commonplace in pretrial investigations today, it was not widely available in cases tried prior to 1994. Moreover, new forensic DNA testing procedures have made it possible to obtain results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce. Consequently, convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results.
4. Since DNA testing is often feasible on relevant biological material that is decades old, it can, in some circumstances, prove that a conviction that predated the development of DNA testing was based upon incorrect factual findings. Uniquely, DNA evidence showing innocence, produced decades after a conviction, provides a more reliable basis for establishing a correct verdict than any evidence proffered at the original trial. DNA testing, therefore, can and has resulted in the post-conviction exoneration of innocent Americans.
5. In the past decade, there have been more than 100 post-conviction exonerations in the United States and Canada based upon DNA testing. At least 11 individuals sentenced to death have been exonerated through post-conviction DNA testing, some of whom came within days of being executed.
6. The advent of DNA testing raises serious concerns regarding the prevalence of wrongful convictions, especially wrongful convictions arising out of mistaken eyewitness identification testimony. According to a 1996 Department of Justice study titled "Convicted by Juries, Exonerated by Science: Case Studies of Post-Conviction DNA Exonerations," in approximately 20-30 percent of the cases referred for DNA testing, the results excluded the primary suspect. Without DNA testing, many of these individuals might have been wrongfully convicted.
7. If biological material is not subjected to DNA testing in appropriate cases, a significant risk exists that persuasive evidence of innocence will not be detected and, accordingly, that innocent persons will be unconstitutionally incarcerated or executed.
8. There is also a compelling need to ensure the preservation of biological material for post-conviction DNA testing. Since 1992, the Innocence Project at the Benjamin N. Cardozo School of Law has studied inmates' claims that DNA testing could prove them innocent. In over 70 percent of those cases in which DNA testing could have been dispositive if the biological material were available, the material had been destroyed or lost. In two-thirds of the cases in which the evidence was found, and DNA testing conducted, the results have exonerated the inmate.
9. In at least 14 cases, post-conviction DNA testing that exonerated a wrongly convicted person also provided evidence leading to the apprehension of the actual perpetrator, thereby enhancing public safety. This would not have been possible if the biological evidence had been destroyed.

(B) PURPOSE - This law is enacted by the legislature to ensure the availability of DNA testing in appropriate cases and ensure that wrongfully convicted persons have an opportunity to establish their innocence

through DNA testing, by requiring the preservation of DNA evidence.

SECTION 3. DNA TESTING
After section XXX, the following new section XXX shall be inserted:

(A) APPLICATION - Notwithstanding any other provision of law, a person in custody pursuant to the judgment of a court of this state may, at any time after conviction, apply to the court that entered the judgment for forensic DNA testing of:
1. Biological material related to the investigation or prosecution that resulted in the judgment.
2. Biological material in the actual or constructive possession of the state.
3. Biological material not previously subjected to DNA testing, or which can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(B) NOTICE TO GOVERNMENT
1. The court shall notify the state of an application made under subsection (A) and shall afford the state an opportunity to respond.
2. Upon receiving notice of an application for DNA testing, the state shall ensure that any remaining biological material secured in connection with the case is preserved pending the completion of proceedings under this section.
3. The court shall order DNA testing upon a determination that an applicant's testing may produce noncumulative, exculpatory evidence relevant to the applicant's claim of wrongful conviction or sentence.

(C) COST - The cost of DNA testing ordered under subsection (B)(3) shall be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the means to pay.

(D) COUNSEL - The court may at any time appoint counsel for an indigent applicant.

(E) POST-TESTING PROCEDURES
1. If the results of DNA testing conducted under this section are unfavorable to the applicant, the court shall:
   a. Dismiss the application.
   b. In the case of an applicant who is not indigent, the court may assess the applicant for the cost of such testing.
2. If the results of DNA testing conducted under this section are favorable to the applicant, the court shall:
   a. Order a hearing, notwithstanding any provision of law that would bar such a hearing.
   b. Enter any order that serves the interests of justice, including orders vacating and setting aside the judgment, discharging the applicant if the applicant is in custody, resentencing the applicant, or granting a new trial.

(F) RULE OF CONSTRUCTION - Nothing in this section shall be construed to limit the circumstances under which a person may obtain DNA testing or other post-conviction relief under any other provision of law.

(G) PRESERVATION OF BIOLOGICAL MATERIAL - Notwithstanding any other provision of law, the state shall preserve any biological material secured in connection with a criminal case for such period of time as any person remains incarcerated in connection with that case.

SECTION 4. EFFECTIVE DATE—This act shall take effect on July 1, 2004.

Death Penalty Moratorium Act

SECTION 1. SHORT TITLE

This Act shall be called the "Death Penalty Moratorium Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS - The legislature finds that:
1. The administration of the death penalty should be consistent with the state's fundamental principles of justice, equality and due process.
2. The fairness of the administration of the death penalty, however, has recently come under serious scrutiny, specifically raising questions of racial disparity [details specific to your state here].

(B) PURPOSE - This law is enacted by the legislature to ensure fairness in the operation of the state's death penalty and guarantee that innocent persons are not put to death.

SECTION 3. DEATH PENALTY MORATORIUM

After section XXX, the following new section XXX shall be inserted:
The state shall not carry out any sentence of death imposed under state law until the legislature considers the final findings and recommendations of the Commission on the Death Penalty in the report submitted under section 4, and enacts legislation repealing this section and implementing or rejecting the guidelines and procedures recommended by the Commission.

SECTION 4. COMMISSION ON THE DEATH PENALTY

(A) ESTABLISHMENT- There is established a commission to be known as the Commission on the Death Penalty (in this title referred to as the "Commission").

(B) MEMBERSHIP
1. Members of the Commission shall be appointed by the Governor in consultation with the President of the Senate and the Speaker of the House.
2. The Commission shall be composed of 15 members, of whom-
   a. Three members shall be state prosecutors.
   b. Three members shall be attorneys experienced in capital defense.
   c. Two members shall be current or former state judges.
   d. Two members shall be current or former state law enforcement officials.
   e. Five members shall be individuals from the public or private sector who have knowledge or expertise, whether by experience or training, in matters to be studied by the Commission, which may include:
      (i) Officers or employees of the state or local governments.
      (ii) Members of academia, nonprofit organizations, the religious community, or business.
      (iii) Other interested individuals.
3. In appointing the members of the Commission, the Governor shall, to the maximum extent practicable, ensure that the membership of the Commission is fairly balanced with respect to the opinions of the members of the Commission regarding support for or opposition to the use of the death penalty.
4. The appointments of the initial members of the Commission shall be made not later than 30 days after the date of enactment of this Act.

5. The Governor shall designate one member appointed under subsection (B)(1) to serve as the Chair of the Commission.
6. Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.
7. Not later than 30 days after all initial members of the Commission have been appointed, the Commission shall hold its first meeting.
8. The Commission shall meet at the call of the Chair.
9. A majority of the members of the Commission shall constitute a quorum for conducting business, but a lesser number of members may hold hearings.

(C) RULES AND PROCEDURES - The Commission shall adopt rules and procedures to govern its proceedings.

SECTION 5. DUTIES OF THE COMMISSION

(A) IN GENERAL - The Commission shall conduct a thorough study of all matters relating to the administration of the death penalty at the state level to determine whether it comports with constitutional principles and requirements of fairness, justice, equality and due process.

(B) MATTERS STUDIED - The matters studied by the Commission shall include the following:
1. Racial disparities in capital charging, prosecuting and sentencing decisions.
2. Disproportionality in capital charging, prosecuting and sentencing decisions based on, or in correlation to, the geographic location and income status of defendant, or any other factor resulting in such disproportionality.
3. Adequacy of representation of capital defendants, including consideration of the American Bar Association "Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases" (adopted February 1989) and Association policies intended to encourage competency of counsel in capital cases (adopted February 1979, February 1988, February 1990, and August 1996).
4. Whether innocent persons have been sentenced to death, and the reasons the wrongful convictions have occurred.
5. Procedures to ensure that persons sentenced to death have access to forensic evidence and modern testing of such evidence, including DNA testing, when such testing could result in new evidence of innocence.
6. Any other law or procedure to ensure that death penalty cases are administered fairly and impartially, in accordance with the state Constitution.

(C) REPORT
1. Not later than one year after the date of enactment of this Act, the Commission shall submit a preliminary report to the Governor and the legislature containing a preliminary statement of findings and conclusions.
2. Not later than two years after the date of enactment of this Act, the Commission shall submit a report to the Governor and the legislature containing a detailed statement of its findings and conclusions, together with its recommendations for legislative and administrative actions.

SECTION 6. EFFECTIVE DATE—This Act shall take effect on July 1, 2004.