



March 17, 2011

To Members of the House Judiciary II, Criminal Law Committee:

Re: House Bills 1519 and 1738 (Amendment 2) – Reinstatement of the Death Penalty

The ACLU of Illinois is opposed to House Bills 1519 and 1738 (Amendment 2); both bills would reinstate the death penalty.

Capital punishment, the ultimate denial of civil liberties, is a costly, irreversible and barbaric practice, the epitome of cruel and unusual punishment. It does not deter crime, and its arbitrary implementation is grotesquely unfair and undermines the 14th Amendment's guarantee of equal treatment under the law. That is why Illinois House and Senate members voted to abolish the death penalty in the 2010 veto session, and the Governor signed SB 3599, which abolished the death penalty, into law on March 9, 2011.

Although it is often assumed that capital punishment is less costly than life imprisonment, the opposite is true: in terms of dollars and in terms of crime control. Even during a moratorium on executions, the Illinois death penalty remains an expensive and ineffective use of scarce resources. From 2003 to 2010, more than \$100 million was appropriated to pay for prosecution and defense costs alone. Further, states that have death penalty laws do not have lower crime rates than states without such laws. In fact, in Illinois, the murder rate has decreased since the implementation of the moratorium on the death penalty¹.

While it is commonly thought that the death penalty is reserved for those who commit the most heinous crimes, in reality only a small percentage of death-sentenced inmates were convicted of unusually vicious crimes. The vast majority of individuals facing execution were convicted of crimes that are indistinguishable from crimes committed by others who are serving prison sentences, crimes such as murder committed in the course of an armed robbery.

Geography, poverty, and race are three factors, unrelated to the crime itself, that can greatly influence who gets executed and who does not. Experts retained by the Illinois Capital Punishment Reforms Study Committee ("Committee") reported, "two extra legal factors – the race of the first-degree murder victims, and the geographic region where the prosecution occurred – were found to be statistically related to the imposition of the death sentence in Illinois"². Further, despite reforms enacted in 2003, data collected by the Committee for its final report showed that a "defendant indicted of a capital-eligible first degree murder was three times more likely to receive a death sentence if he was indicted and convicted in a county outside cook county."³

¹ FBI Uniform Crime Reports, available at <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/>

² Illinois Capital Punishment Reforms Study Committee Report, page 75-76

³ Illinois Capital Punishment Reforms Study Committee Report, page 133

In order for the State of Illinois to take a life, the State must do so fairly, rationally and without the threat of taking an innocent life. There are insufficient safeguards in our criminal justice system to insure that this is how the law is carried out in Illinois. From 1977 to 2000, Illinois executed 12 inmates but freed 13 from Death Row. The 13 freed individuals had their convictions overturned and some were completely exonerated. In the 10 years since the Moratorium, seven more inmates have been released from Death Row – only Florida has released more exonerated defendants. The irrevocability of the death penalty counsels against accepting a system with a demonstrably significant rate of error. We cannot guarantee that our death penalty will not make a fatal mistake and take an innocent life.

The capital punishment system in Illinois is broken beyond repair. The flaws have been clearly identified by the Illinois Capital Punishment Reforms Study Committee, a committee ordered by Governor Ryan and created by statute in 2000, approximately a month after the moratorium on use of the death penalty in Illinois⁴. Two years later, the Committee issued 85 recommendations to improve the death penalty system in Illinois. Eight years later, and despite reforms enacted in 2003, there are still gaping issues that make fixing the broken system impossible – less than half of the recommendations have been implemented, there is not enough money to implement recommendations and local and national organizations, including the 4000 judges, lawyers and law professors of the American Law Institute believe that the system is irretrievably broken.

Given all these factors, we must admit we have a flawed system that sends some people to death row arbitrarily and gives others life in prison. The death penalty is not uniformly applied and the system is plagued with biases unrelated to the guilt of the offender. Abolition of the death penalty during the veto session, and Governor Quinn's subsequent signing of SB 3539 was the necessary response.

The United States is part of a shrinking number of countries that uses capital punishment. It is the only Western industrialized nation that practices the death penalty, and is by far the nation with the largest death row roster in the world. In comparison, all of Western Europe has abolished the death penalty, either by decree of law, or by practice. By continuing to execute people, we are keeping company with Iran, China and Congo as the countries with the most number of executions – countries we often criticize for serious human rights violations.

Even within the United States, capital punishment is not universal. Fifteen states including our sister Midwestern states of Iowa, Minnesota, and North Dakota have abolished it.⁵ Illinois's system of capital punishment is terribly flawed -- we must remain a death penalty abolition state.

We urge you to vote **NO** on House Bills 1519 and 1738 (Amendment 2).

⁴ The Capital Punishment Reforms Study Committee Act, 20 ILCS 3929/1-2.

⁵ The other states to abolish the death penalty are: Alaska; Hawaii; Maine; Massachusetts; Michigan; New Jersey; New Mexico, New York; Rhode Island; Vermont; West Virginia; and Wisconsin. The District of Columbia also has abolished executions.