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DEATH PENALTY INFORMATION CENTER

Testimony Submitted to the Wyoming State Senate

Revenue Committee

Hearings on SF 150 – Repealing the death penalty.

**March 4, 2021
Cheyenne, Wyoming
Via Zoom**

**by Robert Brett Dunham
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INTRODUCTION

Mr. Chairman, Members of the Committee: I want to thank the Committee for providing me this opportunity to testify regarding Senate File 150, which would repeal the death penalty in the State of Wyoming.

My name is Robert Dunham. I am the Executive Director of the Death Penalty Information Center.¹ DPIC is a national non-profit organization based in Washington, D.C. that serves the public by providing information and analysis on capital punishment.² DPIC does not take a position for or against the death penalty itself, but we are critical of the way in which it is administered. Our goal today is not to tell you how to vote on SF 150, but to serve as a resource and to provide you with a national perspective on issues that we believe are highly relevant to your vote.

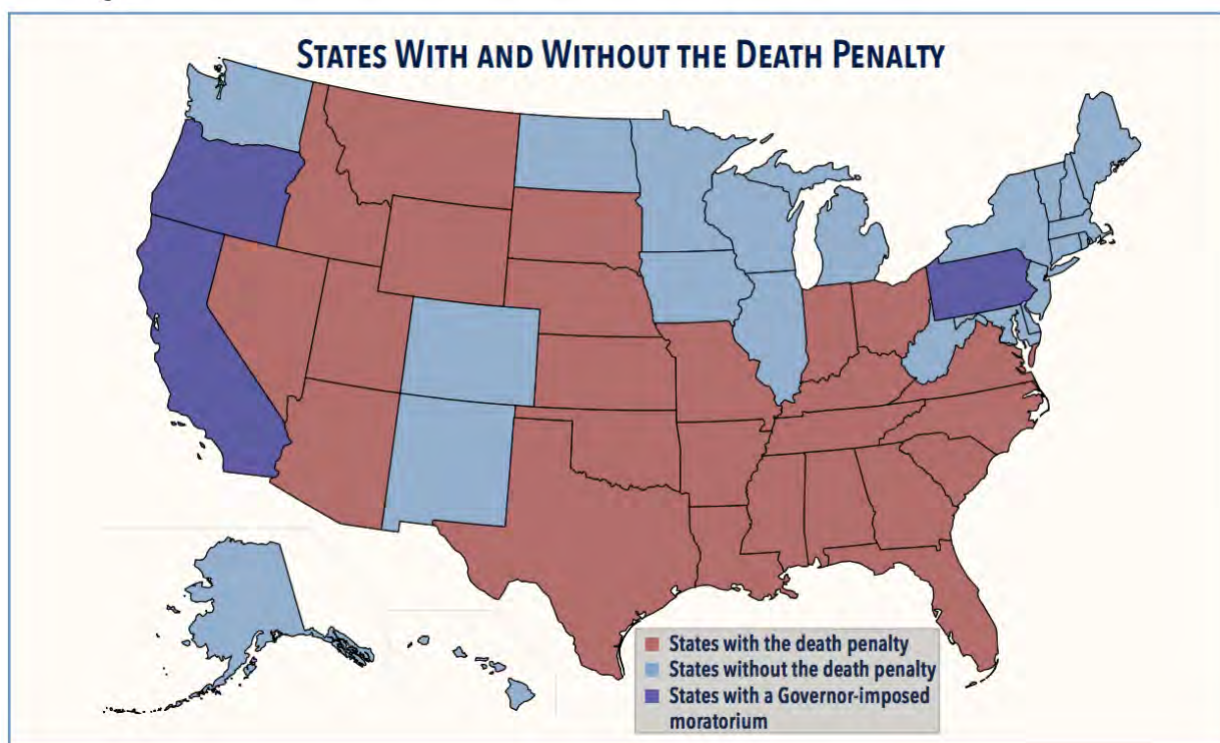
In my testimony, I hope to provide you with data and context that will help you make an informed decision about this legislation. I would be happy to answer any questions that members of the committee may have at any time, either today or by later correspondence.

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² Our website is one of the most widely used by those seeking information on the death penalty. The Library of Congress has chosen it as part of its archive on this issue. Justices of the United States Supreme Court and state supreme courts have cited the website as an authoritative source of death penalty information.

THE NATIONAL CONTEXT

The death penalty is in a period of historic decline across the United States. There have been fewer than 30 executions and 50 new death sentences in the U.S. in each of the last six years, the fewest number of new death sentences imposed in any comparable period since states began re-enacting death penalty statutes in 1973 and the fewest number of executions carried out by states at any time since executions resumed in earnest in the 1980s. New death sentences are down by more than 85% since the mid-1990s. Executions have fallen by 75% since 1999.³

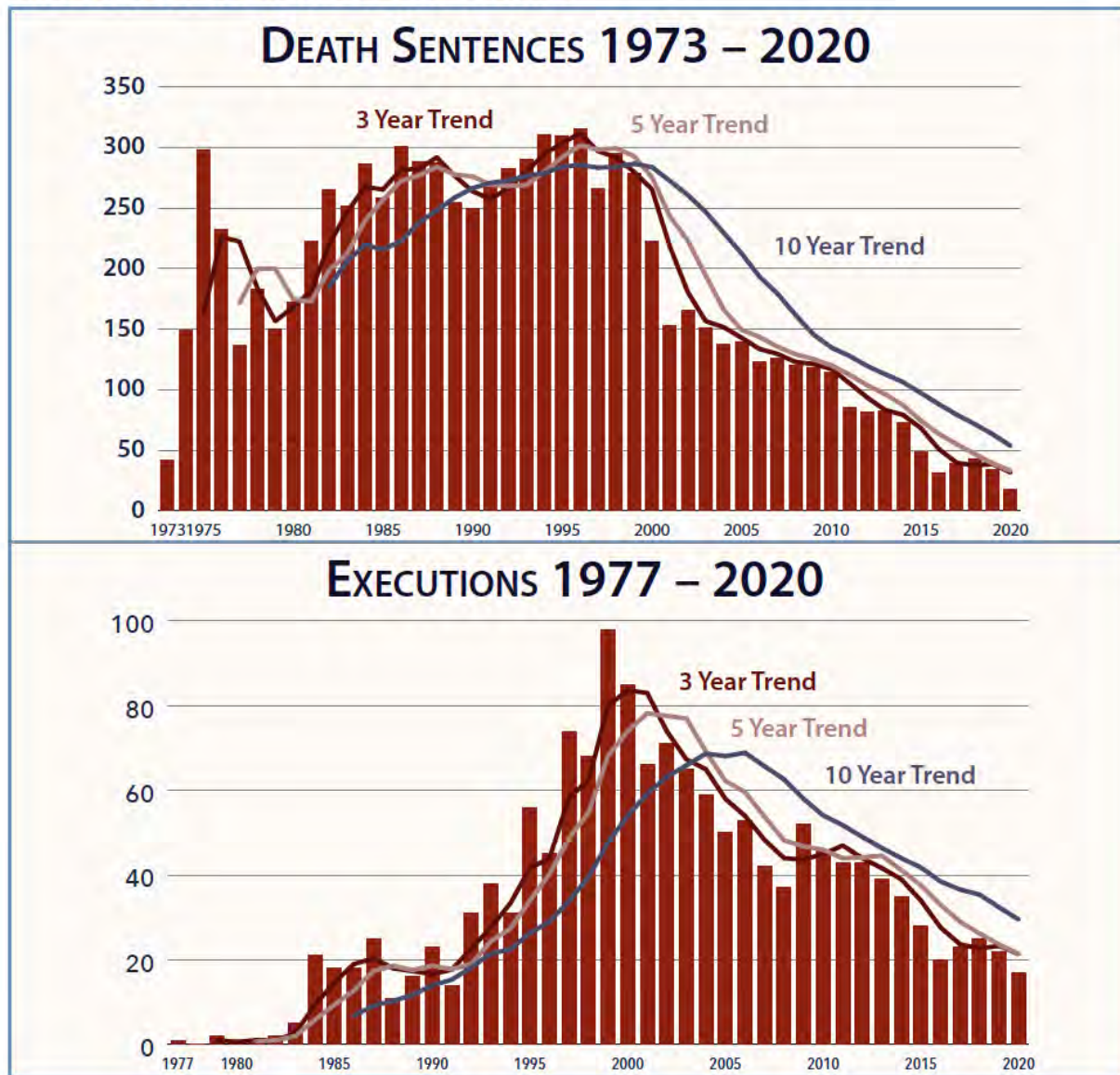


Last month, the Virginia General Assembly voted to abolish the Commonwealth's death penalty. When Governor Ralph Northam signs that bill later

³ See Death Penalty Information Center (DPIC), *The Death Penalty in 2020: Year End Report* (Dec. 2020), available at <https://reports.deathpenaltyinfo.org/year-end/YearEndReport2020.pdf>.

this month, Virginia — which, going back to colonial times, has executed more people than any other jurisdiction that is part of the United States — will become the 23rd U.S. state to end the death penalty and the first Southern state to do so. It will be 11th state this century to abolish capital punishment.

EXECUTION AND SENTENCING TRENDS



In 1996, there were 315 new death sentences imposed across the United States. In 2020, there were 18, the fewest in any year since the U.S. Supreme Court

struck down existing death-penalty statutes in *Furman v. Georgia* in 1972.⁴ There were 98 executions in the U.S. in 1999; in 2020, states conducted only seven, the fewest state executions since 1983, before most states had resumed executions.⁵ Now, the 2020 numbers were unquestionably affected by the coronavirus pandemic, but even before the pandemic shut down most court systems across the country, the nation was on pace for near-historic lows in death sentences and executions.

The breadth of the decline is stunning. 43 states imposed no death sentences at all in 2020: 21 non-death penalty states, plus 22 of the 29 states that authorized capital punishment at the beginning of the year. In addition to the states that did not authorize the death penalty at any point during 2020, there were 9 death penalty states — including Wyoming — that haven't sentenced anyone to death in the past five years. Five more of the death penalty states imposed it only once during that period.⁶

The decline of capital punishment is even more pronounced in the western U.S., where Colorado and Washington have abolished the death penalty and no state

⁴ It might be tempting to argue that the decline in death sentencing is attributable to the nationwide decline in homicide rates. However, as a 2017 study reported, murders in the 37 states that authorized the death penalty in 1994 declined by 35.4% between then and 2014, while death sentences fell by more than double that rate over the same time frame. See DPIC, *Study Analyzes Causes of “Astonishing Plunge” in Death Sentences in the United States* (Apr. 2, 2018), <https://deathpenaltyinfo.org/node/7059>. Moreover, while the murder *rates* were down per person, the U.S. population continued to grow in that 20-year period, meaning that death sentences per murder fell even further.

⁵ DPIC, *The Death Penalty in 2020* see also DPIC, *Executions by Year*, <http://www.deathpenaltyinfo.org/executions-year>. Executions nationwide were still at a 25-year low in 2020, even considering the 10 executions carried out by the federal government.

⁶ DPIC, *Death Sentences in the United States Since 1977*, <https://deathpenaltyinfo.org/facts-and-research/sentencing-data/death-sentences-in-the-united-states-from-1977-by-state-and-by-year>.

west of Texas has carried out an execution in more than five years. California and Oregon have official moratoria on executions and only Arizona and Idaho have executed anyone in the past decade. Of the states west of Texas, only Arizona, California, and Nevada have imposed any new death sentences in the past three years, and during that period every state in the West has either matched or broken its record for the fewest new death sentences imposed in a calendar year.⁷

The trends at the county level are equally dramatic. In 2013, DPIC's analysis of U.S. death sentences revealed that fewer than 2% of all the counties in the United States accounted for more than 56% of the entire country's death-row population.⁸ Eighty percent of U.S. counties had no one on death row and 85% had not executed anyone in the modern era.⁹ The death sentences imposed in the last several years show that even these counties are imposing the death penalty less frequently. In 2018, for the first time *ever* since the death penalty came back in the United States in 1973, no county anywhere in the U.S. imposed more than two death sentences.¹⁰ In 2020, only one county had more than a single trial in which a death sentence was imposed.¹¹ Yet, disturbingly, the decline in the number of death sentences and executions does not appear to have been accompanied by a reduction in its arbitrariness. DPIC's review of the executions over the past three years shows that

⁷ *Id.*

⁸ Richard C. Dieter, *The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous Costs to All*, Death Penalty Information Center (Oct. 2013), <https://deathpenaltyinfo.org/documents/TwoPercentReport.pdf>.

⁹ *Id.* at 1.

¹⁰ DPIC, *The Death Penalty in 2018: Year End Report* (Dec. 2018), <https://reports.deathpenaltyinfo.org/year-end/Year-End-Report-r2.f1590086609.pdf>.

¹¹ *DPIC 2020 Year End Report*.

the vast majority of the prisoners put to death had significant mental, emotional, or cognitive impairments, suggesting that the most vulnerable, rather than the most morally culpable, are disproportionately likely to be executed. In 2018, at least 18 of the prisoners executed (72%) had evidence of one or more of the following impairments: significant mental illness; brain injury, developmental brain damage, or an IQ in the intellectually disabled range; or chronic serious childhood trauma, neglect, and/or abuse.¹² The same was true of at least 19 of the 22 prisoners executed in 2019 (86%)¹³ and 16 of the 17 prisoners put to death in 2020 (94%).¹⁴

Public opinion polls also show that confidence in and support for the death penalty are at or near record lows. According to the Gallup organization, “support for capital punishment ... has been trending downward since peaking at 80% in the mid-1990s during a high point in the violent crime rate.”¹⁵ In November 2020, Gallup reported that support for capital punishment was down to 55%, the lowest in 48 years, and opposition was higher than at any time since 1966.¹⁶ The organization’s Values and Beliefs Poll in May 2020 found that a record-low 54% of

¹² DPIC 2018 Year End Report.

¹³ DPIC, *The Death Penalty in 2019: Year End Report* (Dec. 2019), <https://reports.deathpenaltyinfo.org/year-end/YearEndReport2019.pdf>.

¹⁴ DPIC 2020 Year End Report.

¹⁵ Justin McCarthy, *New Low of 49% in U.S. Say Death Penalty Applied Fairly*, Gallup News (Oct. 22, 2018), <https://news.gallup.com/poll/243794/new-low-say-death-penalty-applied-fairly.aspx>.

¹⁶ DPIC, *Gallup Poll: Public Support for the Death Penalty Lowest in a Half-Century* (Nov. 24, 2020), <https://deathpenaltyinfo.org/news/gallup-poll-public-support-for-the-death-penalty-lowest-in-a-half-century>.

U.S. adults said the death penalty is morally acceptable.¹⁷ A record high 60% percent of Americans told Gallup in October 2019 — the last time it asked the question — that life without possibility of parole is a “better penalty for murder” than the death penalty. Only 36% favored the death penalty.¹⁸ And in 2018, for the first time since Gallup began asking the question in 2000, fewer than half of Americans said they believed the death penalty is applied fairly.¹⁹

SF 150 comes at a time in which state courts and legislatures across the country are moving away from capital punishment and juries are increasingly reluctant to impose it. Eleven states have legislatively or judicially abolished the death penalty this century,²⁰ and more have abandoned it in practice.²¹ Overall, 34

¹⁷ DPIC, *Gallup Poll: Record-Low Percentage of Americans Now Find Death Penalty Morally Acceptable* (June 24, 2020), <https://deathpenaltyinfo.org/news/gallup-poll-record-low-percentage-of-americans-now-find-death-penalty-morally-acceptable>.

¹⁸ DPIC, [Gallup Poll — For First Time, Majority of Americans Prefer Life Sentence To Capital Punishment](#) (Nov. 25, 2019).

¹⁹ *Id.*; see also DPIC, *Gallup Poll—Fewer than Half of Americans, a New Low, Believe Death Penalty is Applied Fairly* (Oct. 22, 2018), https://deathpenaltyinfo.org/Fewer_than_Half_of_Americans_Believe_Death_Penalty_Applied_Fairly.

²⁰ See DPIC, *States With and Without the Death Penalty*, <http://www.deathpenaltyinfo.org/states-and-without-death-penalty> (**New York** (declared statute unconstitutional in 2004, then retroactively applied ruling to remaining death-row prisoner in 2007), **New Jersey** (legislatively abolished 2007), **New Mexico** (legislatively abolished in 2009), **Illinois** (legislatively abolished 2011), **Maryland** (legislatively abolished 2013), **Connecticut** (legislatively abolished 2012, declared unconstitutional by the state Supreme Court in 2015); **Delaware** (statute declared unconstitutional in 2016); **Washington** (statute declared unconstitutional in 2018); **New Hampshire** (legislatively abolished 2019); **Colorado** (legislatively abolished 2020); **Virginia** (legislatively abolished 2021, awaiting Governor’s signature). **Nebraska** also legislatively repealed the death penalty in 2015 but the repeal was halted by referendum in November 2016.

²¹ Execution moratoria are in place in California, Oregon, and Pennsylvania, and Washington’s moratorium terminated only because the state supreme court declared the death penalty unconstitutional. *Id.*, *States With and Without the Death Penalty*. In addition to the moratorium

states have either abolished the death penalty or have not carried out an execution in at least 10 years. The efforts to repeal capital punishment statutes have become increasingly bipartisan, as more and more ideologically conservative legislators have initiated, co-sponsored, and/or voted in favor of bills to replace the death-penalty with life without possibility of parole.²²

What the data tell us is that, for all practical purposes, there has been no such thing as a working death penalty in most of the country. Its use has become increasingly geographically isolated as time has gone on, practiced by a few jurisdictions with a history of discriminatory enforcement of the criminal laws, serious systemic problems with the provision of counsel to indigent defendants, and state and federal courts that have aggressively applied procedural barriers to considering the merits of issues that are raised on appeal. The continuing presence of capital punishment in many of these jurisdictions seems rooted more in historical and cultural factors than grounded on any penological or criminal justice need.

states, nine other death penalty states, plus the U.S. military, have not carried out any executions in more than a decade. See DPIC, *States with no recent executions*, <https://deathpenaltyinfo.org/executions/executions-overview/states-with-no-recent-executions>.

²² See Conservatives Concerned About the Death Penalty, *The Right Way: More Republican lawmakers championing death penalty repeal* (Oct. 2017), <http://conservativesconcerned.org/wp-content/uploads/2017/10/The-Right-Way-Online.pdf>; see also Arthur Rizen and Marc Hyden, *A Dying Shame: The state is not God, and the death penalty is not infallible.*, *The American Conservative*, November/December 2018; DPIC, *Conservative Voices Continue to Call for End of Death Penalty* (Jan. 8, 2018), <https://deathpenaltyinfo.org/node/6970>.

ISSUES GENERALLY APPLICABLE TO THE DEATH PENALTY ACROSS THE COUNTRY

Legislators face numerous questions in determining whether to keep or replace their capital punishment statutes. You will hear testimony today from people addressing many of those issues. But here are just a few basic facts:

Innocence – Everybody’s worst fear about capital punishment is that innocent people will be wrongfully convicted and executed. But it is no longer debatable that innocent people can and do get sentenced to death and some have been executed. The data raise serious questions as to whether we can trust our governments to fairly, honestly, and reliably carry out the death penalty.

Here is what the numbers are telling us. Since 1973, at least 185 men and women who were wrongly convicted and sentenced to death have been exonerated.²³ That is one exoneration for every 8.3 executions — an astonishing failure rate. Some clearly innocent prisoners, like Carlos DeLuna, Rubin Cantu, and Cameron Todd Willingham, have been executed.²⁴ Every state believes that its state-court process is exceptional and has adopted safeguards that will prevent convicting the innocent. And over and over, people continue to be wrongly convicted and condemned in these jurisdictions.

²³ See DPIC, Innocence and the Death Penalty, <https://deathpenaltyinfo.org/innocence-and-death-penalty>.

²⁴ See DPIC, Executed But Possibly Innocent, <https://deathpenaltyinfo.org/executed-possibly-innocent>. We have not been systematically documenting the wrongful executions of likely innocent prisoners, but have found at least twenty instances in which prisoners have been put to death despite serious doubts as to their guilt.

On February 18, DPIC issued a *Special Report: The Innocence Epidemic*,²⁵ examining the demographics and causes of the wrongful capital convictions. Our research corroborates what all of us knew in our hearts to be true — that government is incapable of eliminating the possibility that an innocent person will be sentenced to death and executed. We found exonerations from wrongful capital convictions and death sentences in 118 counties, spanning 29 states. They can occur anywhere, and they do — whether it's Yellowstone, Montana; Bernalillo, New Mexico; Canyon, Idaho; or Philadelphia, Cleveland, Chicago, Oklahoma City, Houston, or Los Angeles.

Unfortunately, the more we learn about what actually happens in these cases of wrongful capital convictions, the worse the problem gets. It is a truism that as long as the legal system involves humans, it is guaranteed to make mistakes. But what we found is that most innocent people who are wrongfully convicted and sent to death row don't get there by mistake. The data from these 185 exonerations show that most wrongful capital convictions and death sentences are not merely accidental or the result of unintentional errors. Instead, they are overwhelmingly the product of police or prosecutorial misconduct or the presentation of knowingly false testimony. More likely than not, they involve a combination of the two and the problem is worse when it comes to defendants from disfavored groups, such as communities of color.

²⁵ Robert Dunham *et al.*, *DPIC Special Report: The Innocence Epidemic* (Feb. 18, 2021), <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-special-report-the-innocence-epidemic>.

Reliability – According to the U.S. Bureau of Justice Statistics, the single most likely outcome of a capital case once a defendant is sentenced to death is that the conviction or death sentence will be overturned.²⁶

Costs – Studies consistently show that the death penalty costs more than even the harshest alternative punishments such as life without the possibility of parole or a long prison term.²⁷

Discrimination – Wyoming does not have a large enough dataset of information from which to make statistically meaningful statements about racial, geographic, and other forms of discrimination or arbitrariness in the administration of the death penalty here. However, there is persistent evidence of racial and geographical arbitrariness or bias in the administration of capital punishment across the country.

Our September 2020 report, *Enduring Injustice: The Persistence of Racial Discrimination in the U.S. Death Penalty*,²⁸ examined the impact of race over the course of the 400-year history of capital punishment in the U.S. from the colonial period to the present. We found that race has an impact on death penalty cases at

²⁶ Frank R. Baumgartner and Anna W. Dietrich, Monkey Cage: Most death penalty sentences are overturned. Here's why that matters., The Washington Post, March 17, 2015, <https://www.washingtonpost.com/news/monkey-cage/wp/2015/03/17/most-death-penalty-sentences-are-overturned-heres-why-that-matters/>.

²⁷ See DPIC, *Costs of the Death Penalty*, <https://deathpenaltyinfo.org/costs-death-penalty#financialfacts>.

²⁸ Ngozi Ndulue, *Enduring Injustice: The Persistence of Racial Discrimination in the U.S. Death Penalty* (Sept. 2020), <https://documents.deathpenaltyinfo.org/pdf/Enduring-Injustice-Race-and-the-Death-Penalty-2020.pdf>.

every stage of the legal process, from policing through execution, resentencing, or exoneration. Prosecutors are more likely to seek death in cases involving white victims; once a case has been designated as capital, defendants of color are disproportionately likely to be sentenced to death. In the U.S. South, the death penalty has been a descendent of slavery, lynching, and Jim Crow segregation, often overtly reinforcing the same racial hierarchies. In the West, it has often taken on the characteristics of frontier justice and vigilantism.

The Wyoming State Historical Society has described the history of “vigilante justice” in Wyoming and the attempts by “big cattlemen” in the 1890s and early 1900s to drive off small ranchers and sheepmen. But that period was followed, the historical society wrote, by “an intense decade and a half of Wyoming lynchings of Black men,” during which Wyoming “was lynching Black men at a rate 30 times as great as was occurring at the same time in the deep South.”²⁹

That history is not an indictment of Wyoming’s current administration of capital punishment, but a reminder that the state is far from immune from the effects of racism that permeates its administration nationwide.

Public Safety and Deterrence – There is no evidence that the death penalty is a deterrent, much less that it deters more effectively than a long prison term or a sentence of life without parole.³⁰ Studies show that “[t]he certainty of apprehension,

²⁹ See Kim Viner, *The Lynching of Joe Martin*, WyoHistory.org, <https://www.wyohistory.org/encyclopedia/lynching-joe-martin>.

³⁰ See DPIC, *Facts about Deterrence and the Death Penalty*, <https://deathpenaltyinfo.org/facts-about-deterrence-and-death-penalty>.

and not the severity of the ensuing legal consequence, is the more effective deterrent” and that “the deterrent return to increasing an already long sentence appears to be small, possibly zero.”³¹

DOES THE DEATH PENALTY PROTECT THE PUBLIC AND MAKE POLICE SAFER?

One of the recurrent questions with which legislatures have to grapple is what will happen if they vote to replace the death penalty with life without parole or some other lengthy prison term. That question is in turn closely related to the questions of whether the death penalty deters murders and contributes to public safety and whether having a death penalty makes police officers and other law enforcement personnel safer.

To try to answer these questions, DPIC analyzed three decades of FBI murder data.³² First, to try to determine the contribution of the death penalty to public safety and what happens when states abolish the death penalty, we broke the states down into three categories:

³¹ See DPIC, *Report: Deterrence is Based on Certainty of Apprehension, Not Severity of Punishment*, <https://deathpenaltyinfo.org/node/6950>; Daniel S. Nagin, “Deterrence,” in *REFORMING CRIMINAL JUSTICE: BRIDGING THE GAP BETWEEN SCHOLARSHIP AND REFORM*, vol. 4, *Punishment, Incarceration, and Release*, Academy for Justice, Arizona State University (E. Luna, ed. 2017).

³² For our initial study, our source of information on the number of murders nationwide and in each state was the FBI UNIFORM CRIME REPORTS, ANNUAL MURDER DATA from 1987 to 2015. Our source of information on the numbers of murders of law enforcement nationwide and in each state was the FBI UNIFORM CRIME REPORTS, LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED, OFFICERS FELONIOUSLY KILLED ANNUAL DATA (LEOKA reports), 1987 through 2015. Our source of information on population nationwide and in each state was the FBI UNIFORM CRIME REPORTS, ANNUAL STATE POPULATION DATA from 1987 through 2015. We have continued to review the FBI data since 2015, and our analysis and conclusions remain the same.

1. Death Penalty States: states that have had the death penalty essentially from the beginning of the modern era of the death penalty in the 1970s through now;
2. Non-Death Penalty States: states that abolished the death penalty at some point in the 20th century and never had it at any point during our study period; and
3. Transitional States: states that, at some point in this century have abolished the death penalty; for that, essentially, we're looking at 2007 and forward.

This gave us four comparison groups: the three categories of states, plus the country as a whole. We then looked at two sets of murder rates nationally from 1987 through 2015: murders generally and murders of law enforcement personnel. We chose 1987 as the starting date because that was the earliest date for which we found FBI Uniform Crime Statistics on officers feloniously killed in the line of duty.

We wanted to find out whether murder rates and trends differed depending upon whether or not a state had the death penalty and we wanted to find out if murders would increase following the abolition of the capital punishment. We wanted to test several hypotheses to see if we could find answers to important policy questions:

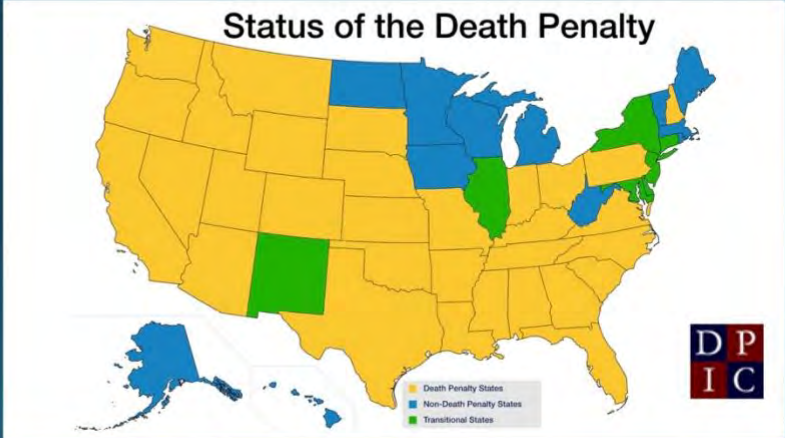
- If the death penalty were a deterrent, the hypothesis would be that murder rates in the transitional states would surely rise, both in the transitional state itself and in comparison to the trends in death-penalty and non-death-penalty states as a whole. Did they?
- If the death penalty were necessary to protect law enforcement, there should be a noticeable change in the rates at which police were killed, again both in the transitional state itself and in comparison to the trends in death-penalty and non-death-penalty states as a whole. Did killings of police officers go up?

- And, if—as opponents of death-penalty abolition had argued—police officers were especially vulnerable without the death penalty and its repeal would lead to “open season on police officers,” you'd expect to see not just an increase in the rate at which police officers were killed, but an increase in the number of murders of police officers as a percentage of all homicides. Did that happen?

The short answer to these questions was: “No.”³³

The short answer to these questions is “No.”

- Did murder rates rise? **No.**
- Did the rate of murders of law enforcement go up? **No.**
- Did killings of police increase as a %age of all murders? **No.**



Status of the Death Penalty

Legend:

- Death Penalty States (Yellow)
- Non-Death Penalty States (Blue)
- Transitional States (Green)

DPIC

Overall Murder Rates

First, we looked at overall murder rates and trends to see if having the death penalty had any discernible effect. Then we looked at what happened in the “transitional states.” As suggested earlier, the theory that murder rates would rise

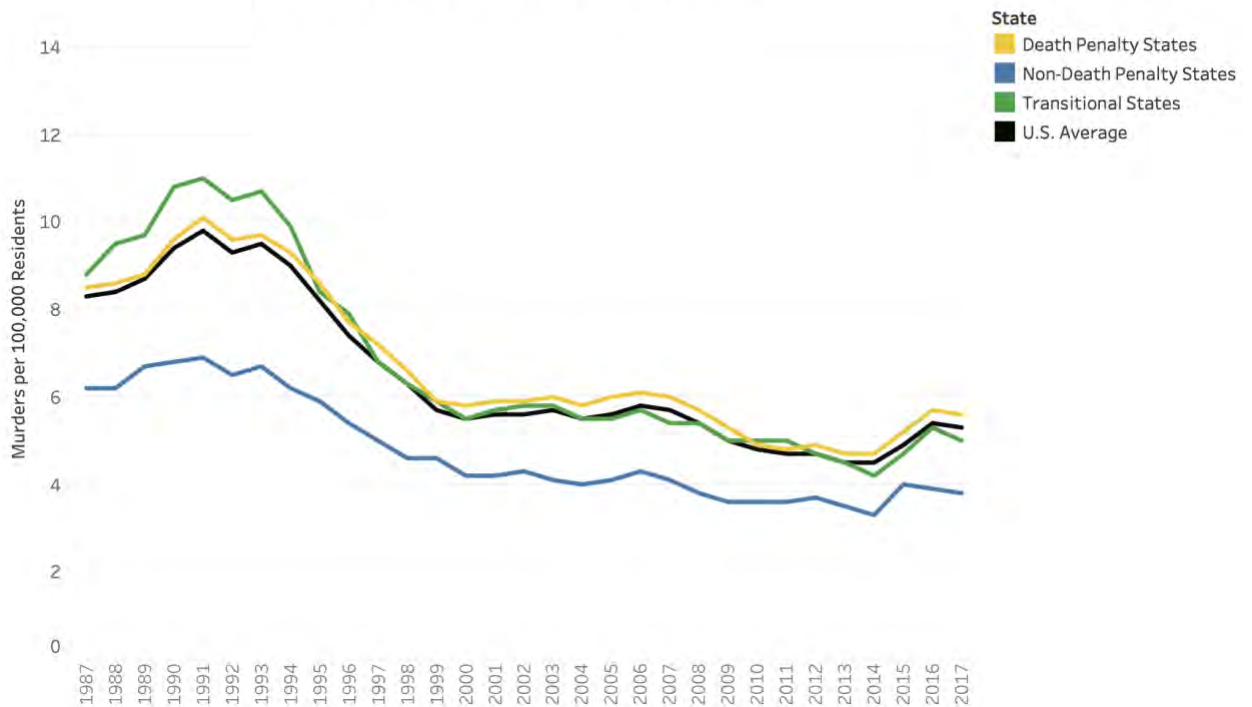
³³ For an explanation of our methodology and how we did our calculations, see DPIC, *Supporting Data for 2017 DPIC Study of Murder Rates and Killings of Police: How DPIC conducted the analysis*, <https://deathpenaltyinfo.org/Data-from-DPIC-Study-of-Murder-Rates-and-Killings-of-Police>.

after a state abolishes the death penalty is predicated upon the assumption that the death penalty actually affects murder rates.

Accepting that assumption, our hypotheses were that: if the death penalty deterred murder generally, then—all other things being equal—murder rates should be lower in states with the death penalty than in states that did not authorize capital punishment; when homicide rates rise nationally, they should rise less in death-penalty states than in non-death-penalty states; when homicide rates fall nationally, they should fall more in states that have the death penalty than in states that don't; and murder rates should rise more or fall less after states abolish the death penalty in comparison both to death-penalty states and states that had long before abolished the death penalty. And if this hypothesized deterrent effect were anything but coincidental in any given state, the pattern of disproportionately larger increases and disproportionately smaller decreases in murder rates should be consistent across the states that had abolished.

The graphic on the next page, updated to include FBI data through 2017, show the trends in the overall murder rates. The first thing to notice is that the murder rate in the death-penalty states is consistently and markedly higher than in states that don't have the death penalty. The second thing you see is that the murder trends are pretty much the same, irrespective of what group of states you are in. That suggests that the death penalty doesn't make a difference in murder rates. It isn't the deterrent it was advertised to be.

Murder Rate 1987–2017

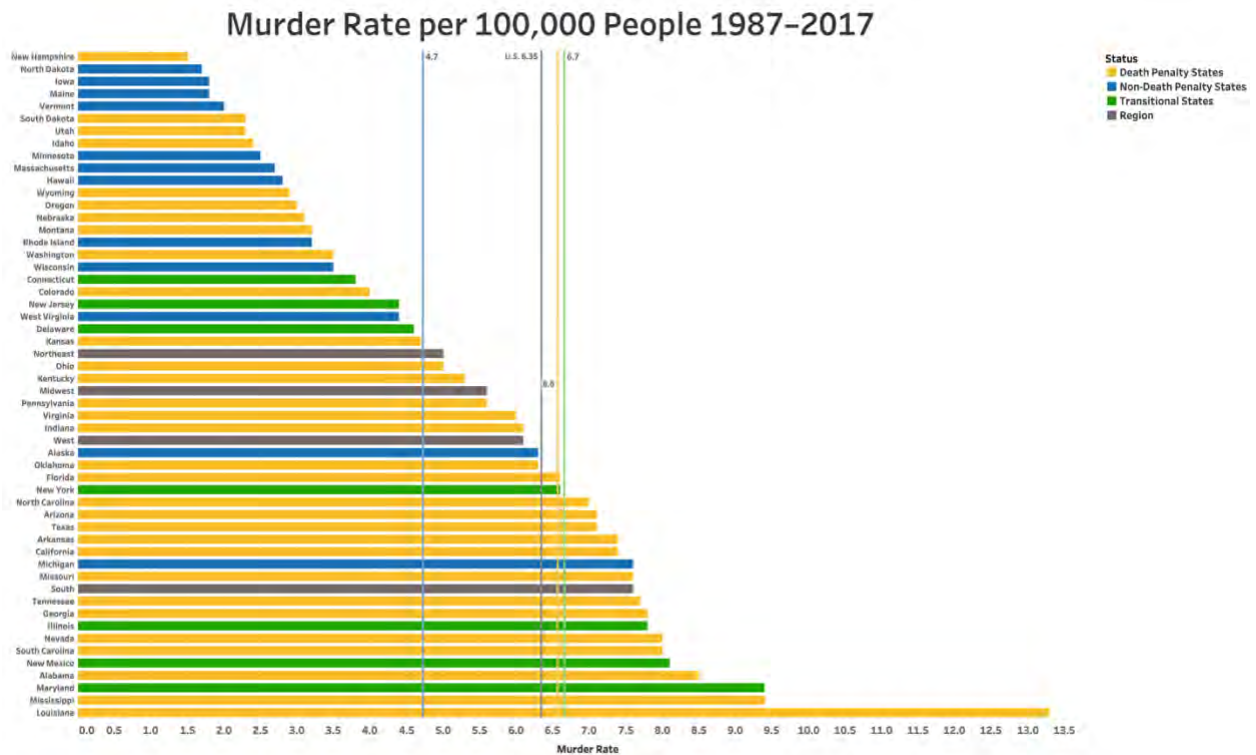


An interesting point to notice here is that the transitional states as a whole—the states that eventually abolished the death penalty—had higher collective murder rates earlier on in the study period, on the left-hand side of the graph. What you would have expected to see, if the death penalty were a deterrent, is that the murder rates in those states would disproportionately rise over time following abolition, so the green graph line designating the transitional states should spike in comparison to the other lines near the right-hand side of the graph. That did not happen. Instead, the patterns for all four comparison groups are virtually identical from the year 2000 on.

We then color-coded the 50 states by category and ranked them by their average murder rate for the years 1987 through 2015. That's the graphic (updated to include data through 2017) that follows here. The states with the fewest numbers of

murders per 100,000 people are at the top of the graph. Those with the highest number of murders per 100,000 people are towards the bottom. The vertical lines reflect the average murder rate over the entirety of the study period for each category of state.

What we found is virtually the opposite of what you would expect under the deterrence hypothesis.



The states that never had the death penalty during the 31 years covered by the study were clustered toward the top of the graphic, among the states with the lowest murder rates. All but one of the non-death-penalty states had a murder rate below the national average. By contrast, virtually every state with a murder rate above the national average had been a death-penalty state for most or all of the study period. Death-penalty states had 13 of the 17 highest murder rates and 21 of the highest 27.

By contrast, non-death-penalty states had 7 of the 11 lowest murder rates. There was no discernible pattern among the transitional states.

In addition, only one of the 22 states with the lowest murder rates had averaged more than one execution per decade over the past half century, and that state – Utah – had carried out seven executions. **So, the states with the lowest murder rates were, uniformly, states that had abolished the death penalty or that almost never carried it out.**

We then compared the murder rates for each of the categories of states. The aggregate numbers quantified what the graphic of murder rates over time suggested: that murder rates in individual states tend to be higher if the state has the death penalty; and, collectively, murder rates are higher in states that have the death penalty than in states that do not. That is not a result you would expect if the death penalty were a deterrent.

Here is what the numbers told us:³⁴

Murder Rates (1987-2015)					
Category of State	Murder Rate/100,000 Population	Murder Rate in Comparison to:			
		United States	Death Penalty States	Non-Death Penalty States	Transitional States
United States	6.424	X	1.03 times lower	1.34 times higher	1.05 times lower
Death Penalty States	6.646	1.03 times higher	X	1.39 times higher	1.02 times lower
Non-Death Penalty States	4.788	1.34 times lower	1.39 times lower	X	1.41 times lower
Transitional States	6.767	1.05 times higher	1.02 times higher	1.41 times higher	X

³⁴ The charts in this testimony are based on an analysis of the 29 years of murder and population data through 2015. We intend to update this analysis once the data through 2020 are available.

The death-penalty states had a higher than average murder rate – indeed, that was the case for every one of the years we reviewed. Overall, murders were committed in death-penalty states at a rate 1.39 times higher than murders in non-death penalty states.

Looking at the numbers, one would be tempted to suggest that the death penalty caused the higher murder rates. But that argument is just as ridiculous as suggesting that the death penalty deters. Instead, what I think the numbers are telling us is that the death penalty has no effect on murder rates; the relationship is the other way around. Generally speaking, the states that have the most murders and the highest murder rates are the ones that tend to have the death penalty. And the states that most long ago abolished the death penalty tend to be states that have had the fewest number of murders and the lowest murder rates.

But what about the transitional states? The data showed that the overall murder rate in the transitional states was substantially higher than all other categories of states from 1987 through 1995, dropped below the murder rates in the retentionist states in 1995, and has remained below the murder rates in those states in all but two years since. The murder rate in the transitional states has remained very close to, and even slightly below, the national rate for the last two decades.

If the death penalty had any causal relationship to murder rates, those numbers would make no sense at all. There should, instead, have been a discernible pattern within the transitional states, with murder rates disproportionately rising as death-penalty abolition occurred. But our review of what has happened in the transitional

states after abolition shows no consistent pattern at all.³⁵ What is clear is that homicide rates did not spike following abolition. They did not rise disproportionately to increases in other categories of states; they did not fall slower than murder rates were falling in other states. Abolition had no distinctive effect on murder rates, and the surge in murders predicted by the deterrence hypothesis never materialized.

Officer-Victim Rates

We next looked at officer-victim rates to test the hypothesis that the death penalty makes police safer. We found that it does not.

Fortunately, killings of police in the line of duty are very rare and represent a tiny fraction of all murders. But because of this, the year-by-year numbers are volatile, especially at the state level. But viewed over the longer term, historic patterns emerge for each of the categories of states we examined and, generally-speaking, the trends are similar. As with murders in general, the rates at which police officers are killed are *higher* in most years in states that have the death penalty than in states that don't. And, over the course of time, the officer-victim murder rates are *lowest* in most years in states that once had the death penalty but later-on abolished it.

When we aggregate the numbers, this is what we see:³⁶

³⁵ *Life After the Death Penalty: Implications for Retentionist States*, ABA Section of Civil Rights and Social Justice, August 14, 2017, https://deathpenaltyinfo.org/files/pdf/Life-After-Death-Penalty_Transcript.pdf.

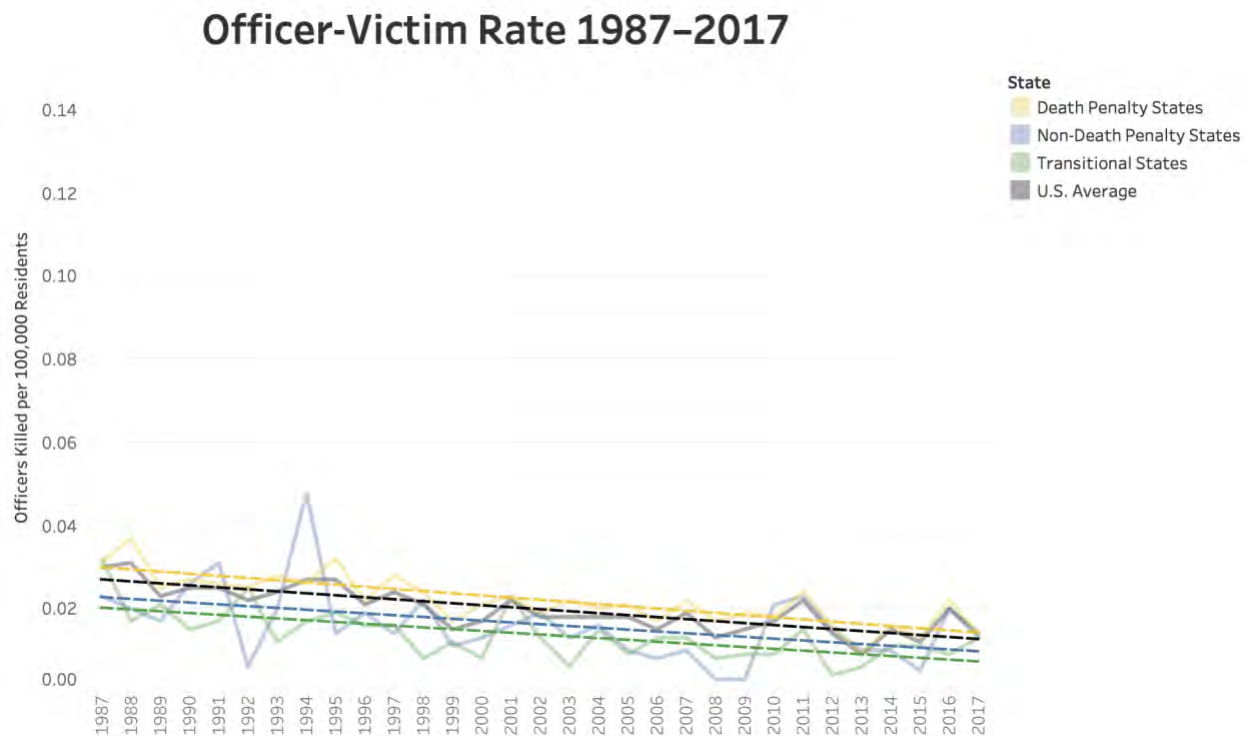
³⁶ Murders in which police officers are victims are so rare and the officer-victimization murder rates are so small that we report them in the table as the murder rate per 1 million population. Even then, the numbers are a fraction of one in a million. But looking at the numbers at this decimal level avoids injecting mathematical errors from rounding and makes the numbers easier to grasp visually.

Officer Murder Rates (1987-2015)					
Category of State	Murder Rate/1,000,000 Population	Murder Rate in Comparison to:			
		United States	Death Penalty States	Non-Death Penalty States	Transitional States
United States	0.195	X	1.11 times lower	1.23 times higher	1.43 times higher
Death Penalty States	0.218	1.11 times higher	X	1.37 times higher	1.59 times higher
Non-Death Penalty States	0.159	1.23 times lower	1.37 times lower	X	1.16 times higher
Transitional States	0.136	1.43 times lower	1.59 times lower	1.16 times lower	X

As with murder generally, the death-penalty states had a higher-than-average rate of murders of police officers: 1.11 times higher than the country as a whole; 1.37 times higher than non-death-penalty states; and 1.59 times higher than the transitional states. That the risk of a police officer being murdered in the line of duty was 1.37 times *lower* in states that had long abolished the death penalty than in states in which it was a long-time fixture undermines the myth that the death penalty is necessary for officer safety.

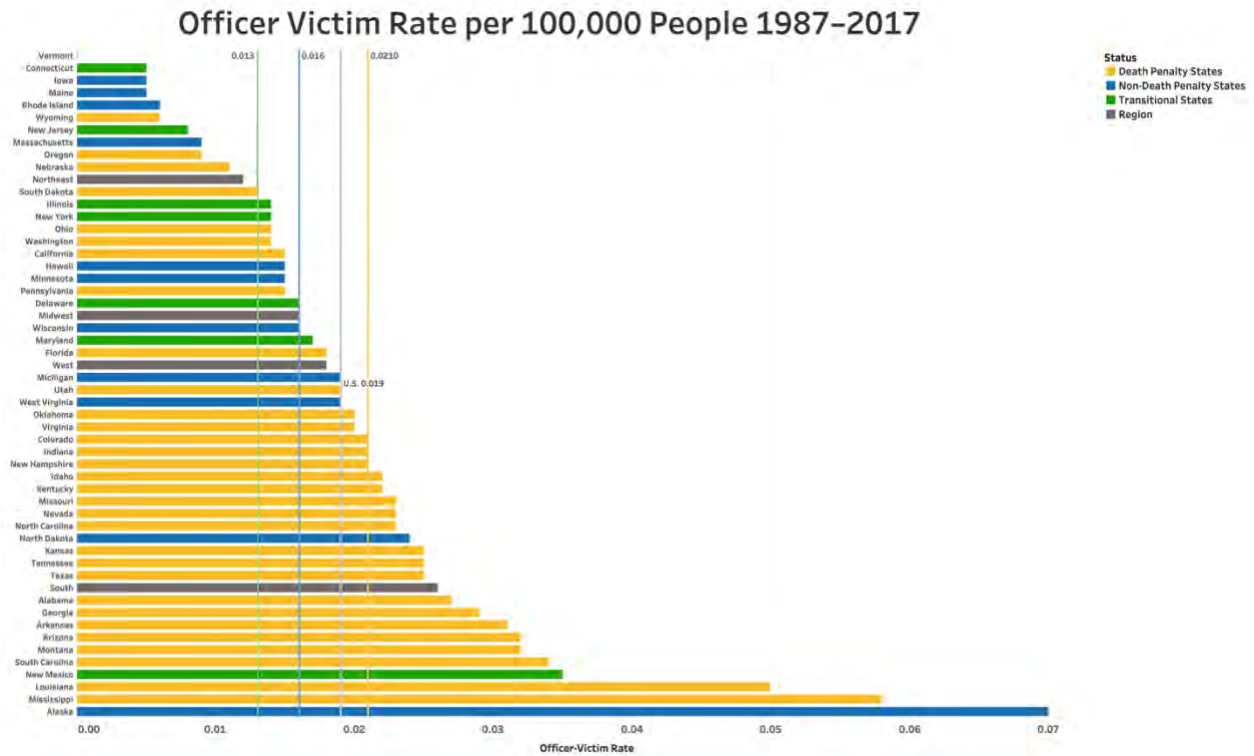
But even more interestingly, officers were substantially less likely to be murdered in one particular group of states: the transitional states – states that had the death penalty for most of the study period, but subsequently abolished it. In these states, the officer-victim rates were 1.43 times lower than the national average. That murders of police occurred at such different rates in this class of death penalty states prior to their abolition of the death penalty than in the states that did not abolish the death penalty once again underscores that the presence or absence of the death penalty did not make officers either more safe or less safe, and indeed, there appears to be no causal relationship whatsoever between the death penalty and murders of law enforcement personnel in the line of duty.

The data from the death-penalty states and the non-death-penalty states also strongly suggest that having the death penalty has not made officers safer. As with murders generally, the FBI homicide dataset shows that officers are disproportionately murdered in states that have the death penalty, as compared to states that don't. And, with a single exception, the states that recently abolished the death penalty were clustered at the top of the graphic, among the states with the lowest rates of killings of police officers.

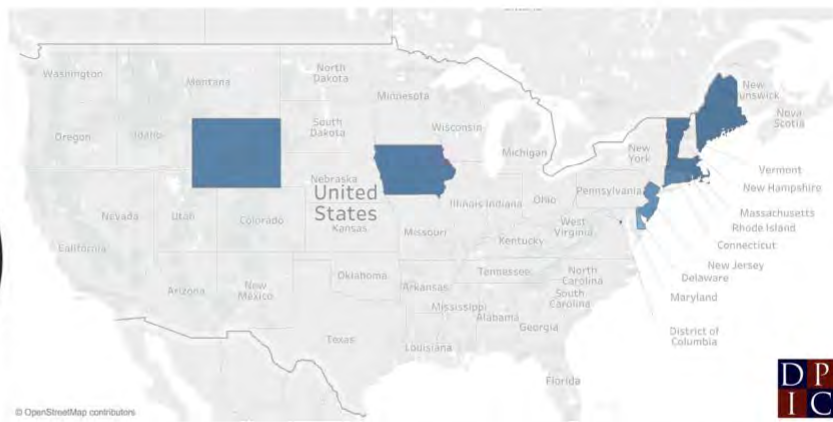


Four of the five safest states for police officers were non-death penalty states. Seven of the eight safest states for police officers were states that either did not have the death penalty at any time in the study period or transitional states that recently abolished capital punishment. The lone death-penalty state in the group was Wyoming, which has no one on death row, has carried out one execution in the past 50 years, and hasn't executed anyone since 1992. By contrast, death-penalty states

comprised 21 of the 24 states with the highest rates of officers murdered in the line of duty.



Do
executions
make police
safer?



- Eight of the 9 safest states for law enforcement don't have the death penalty: Vermont, Iowa, Connecticut, Maine, Rhode Island, New Jersey, Delaware, and Massachusetts. Wyoming has the death penalty, but has no one on death row.



The data from the transitional states also undermine any thought that the death penalty affects the rate at which officers are killed in the line of duty. With one exception, the officer-victim rates in the transitional states all were below the national average and substantially below the average for police-murder victimization in the long-term death-penalty states. But there is no reason why – if the death penalty made officers safer – they should be more safe in a class of death-penalty states that later abolished capital punishment and remain safer after those states abolished. The officer-victim rates in the transitional states also were at or below the average for the non-death-penalty states as a whole, which a deterrence theory cannot explain.

Further, if the death penalty were necessary to protect law enforcement, there should be a noticeable and consistent change in the rates at which police were killed following abolition. That didn't happen. Instead, as with murders as a whole, at the time of our analysis, the seven states that had abolished the death penalty this century showed no post-abolition pattern of increased officer-victimization, nor any consistent deviation from national trends.³⁷

If there is no discernible relationship between having or not having the death penalty and trends related to murders generally or murders of police officers in particular, what do the numbers mean? The most likely answer appears to be “politics”: the perception that police are at heightened risk and can be protected by having a death penalty is a political factor in a state's judgment as to whether to keep

³⁷ *Life After the Death Penalty: Implications for Retentionist States*, ABA Section of Civil Rights and Social Justice, August 14, 2017, https://deathpenaltyinfo.org/files/pdf/Life-After-Death-Penalty_Transcript.pdf.

or repeal the death penalty. While the death penalty appears to make no measurable contribution to police safety, the prevalence or absence of murders of police officers changes the political climate in which decisions are made about whether to retain or repeal the death penalty. Phrased differently, the rate at which police officers are killed appears to drive the political debate about the death penalty.

Officer Victims As a Percentage of All Homicides

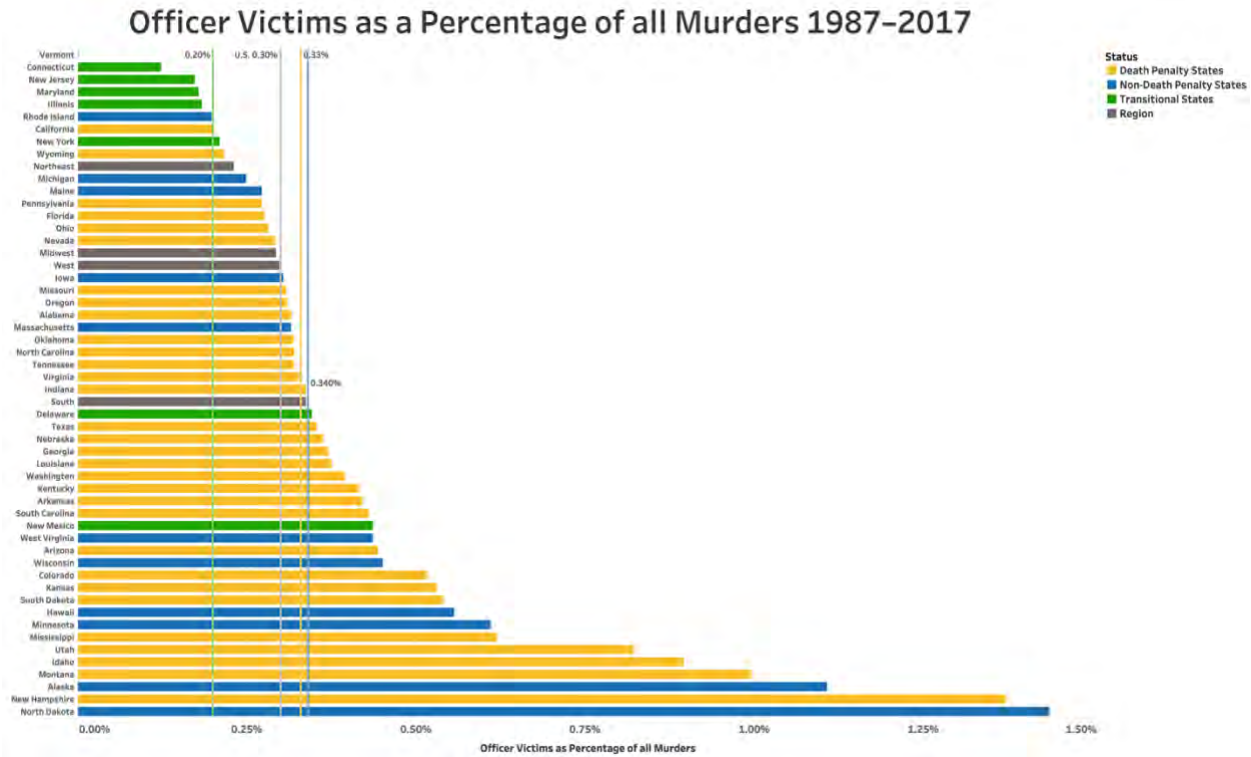
According to the deterrence hypothesis, if the death penalty were uniquely important in protecting police, murders in which police are victims should be smaller as a percentage of all murders in states that have the death penalty. It turns out, however, that there is virtually no difference in the percentages between death-penalty states and non-death-penalty states. Murders of police officers account for one-third of one percent of all murders in both sets of states. The theory also posits that if police were especially vulnerable without the death penalty, murders of officers should rise as a percentage of all homicides after abolition. But the formerly death-penalty states that most recently abolished capital punishment have a much lower percentage of murders in which officers are victims, at one-fifth of one percent. And, irrespective of murder trends over time, in most years, the percentage of murders in which officers are victims was lower in the transitional states.

Here are the numbers.

Percentage of Homicides With Officers as Victims (1987-2015)					
Category of State	Officer Percentage of Homicides	Officer Percentage of Homicides in Comparison to:			
		United States	Death Penalty States	Non-Death Penalty States	Transitional States
United States	0.304%	X	1.08 times lower	1.09 times lower	1.51 times higher
Death Penalty States	0.327%	1.08 times higher	X	1.01 times lower	1.62 times higher
Non-Death Penalty States	0.332%	1.09 times higher	1.01 times higher	X	1.65 times higher
Transitional States	0.202%	1.51 times lower	1.62 times lower	1.64 times lower	X

As mentioned above, the percentage of murders in which police officers were victims was virtually identical in states that long had capital punishment (0.327%) and states that had long abolished it (0.332%). However, it was **1.6 times lower** (0.202%) in the transitional states. The presence or absence of a death penalty did not appear to have any effect on this rate in the transitional states.

The state-by-state graph of officer victims as a percentage of all homicides dramatically illustrates the difference between transitional states and the other states with respect to the killings of police officers. The percentage of killings that involve police officers doesn't tell us much about either the death-penalty states or the non-death-penalty states. Their overall averages are virtually indistinguishable and there is significant variance among the individual states in both categories. But there is a significant difference between these states and the transitional states, with most of the states that have recently abolished the death penalty having a lower percentage of murders involving law-enforcement victims.



Wyoming, again, is notable here. As with officer-victimization rates, its proportion of murders in which officers are victims is among the very lowest in the nation, despite its functional abolition of the death penalty in practice. In fact, of the 13 states with the lowest percentage of officer-victims, Wyoming is the only state that hasn't either already abolished the death penalty or imposed a formal moratorium on carrying it out. The data suggest that carrying out the death penalty has not made officers safer across the country and abolishing it or not carrying it out in practice has not placed officers in Wyoming or other states at greater risk.

The Lessons From the Study

So what lessons can we take from the data? The fact is that states with the death penalty continue to have higher murder rates than states without the death penalty – both in terms of murders generally and murders with law-enforcement victims. The data show that national homicide trends are the same from one class of

state to another, irrespective of whether a state has long had the death penalty, has never had the death penalty, or has recently abolished the death penalty.

The data suggest there is no apparent correlation between the death penalty and changes in murder rates – if anything, the relationship goes the other way around: states with higher murder rates tend to have – and retain – the death penalty. They also suggest that when abolition occurs, murders don't rise, nor do the rates or percentages at which police officers are killed. The data show that the death penalty does not drive whether and to what extent murders occur, and it has no discernable effect on the killing of law enforcement officers.

In short, there is no evidence that the death penalty deters murders in general or makes police safer. Death-penalty states have persistently higher murder rates than non-death-penalty states. Police likewise are killed at higher rates in death-penalty states than in non-death-penalty states. And the exceptions to that rule — higher risk for states with the death penalty — appear to be states that have, but do not carry out, the death penalty. Whether a state has a death penalty, has no death penalty, or abolishes a death penalty it once had appears to have no effect, one way or the other, on murder rates or on making police officers safer.

CONCLUSION

Given the absence of any deterrent effect, the fact that the death penalty doesn't make either the public or police safer, the cost, the high rate of errors across the country in capital cases, and the risk of executing someone who is innocent, the question for the legislature seems more like “Does the death penalty continue to serve a legitimate purpose and is it worth the cost and the risks?”

A rhetorical question may help in assessing the risk of executing a person who is innocent:

When you and your colleagues decided to go into public service, how many of you thought: “I want to do this job because government always gets things right and there is nothing I need to do to make things better?”

Former Utah State Senator Steve Urquhart, who had previously voted to bring back the firing squad for Utah executions, said the firing-squad bill had caused him to begin thinking more seriously about capital punishment. He first asked his colleagues, “what policy do we as a state get right most of the time?” Then he asked, “what policy do we get right *all* of the time?” That changed his mind about capital punishment.

The data show that more often than not, the death penalty gets it wrong — after a costly trial and appeals, a capital conviction or death sentence is overturned and is not imposed the next time around. The data also show that, with 185 death-row exonerations and an unknown number of wrongful executions, the death penalty makes potentially deadly errors a disturbingly high number of times.

These are important considerations with which this body must grapple in deciding how to proceed regarding Senate File 150 and the state’s death penalty. The Death Penalty Information Center would be happy to provide the Committee with more extensive information on the points I have discussed during this testimony, and on any other questions it may have about capital punishment in Wyoming.