



**SENATOR  
EDNA BROWN**  
MINORITY WHIP  
11TH DISTRICT

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– Ranking Member  
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Veterans Affairs

Sponsor Testimony  
Senate Bill 270  
State Senator Edna Brown  
Senate Judiciary Committee  
January 31, 2012

Thank you, Chairman Wagoner, Ranking Member Kearney and Members of the Senate Judiciary Committee, for allowing me to present sponsor testimony on Senate Bill 270, which is a bill to abolish capital punishment in the State of Ohio.

It is my long-held belief that the possibility of putting an innocent person to death is one that a moral society should avoid. The collateral damage of such an error is one that we cannot ignore, and that is the primary reason for my decision to introduce this legislation.

There have been many recent events concerning Ohio's continued use of capital punishment that explain why I believe it should be abolished.

According to the Death Penalty Information Center, to date six death row inmates in Ohio have been exonerated. That is six innocent human beings that were sentenced to death by the State of Ohio.

The most recent case was that of Joe D'Ambrosio in Cuyahoga County. Just last Monday, January 23rd, 2012, a ruling of the U.S. Supreme Court upheld an earlier ruling that determined the state of Ohio withheld key evidence from the defense, thus overturning D'Ambrosio's wrongful conviction in 1989.

Even more recently, last Thursday, January 26, 2012, Judge Gregory L. Frost stopped the upcoming execution of Michael Webb. Judge Frost said that Webb may join a lawsuit to question the state's protocol for use of lethal injections from a constitutional standpoint. This was the second scheduled execution delayed by Judge Frost due to Ohio's failure to follow its own protocol for the lethal-injection process.

These are two very recent examples of the uncertainty that surrounds a very certain and final punishment administered by the state.

According to the Innocence Project, there have been 289 exonerations in the United States thanks to new DNA evidence alone- 17 of those individuals served time on death row.

In a system that is clearly prone to error in our state and across the country, it is my conclusion that the state of Ohio should not be able to make the grievous error of ending an innocent person's life.

While preventing such a scenario is my primary motivation for introducing this legislation, there are other reasons to abolish capital punishment in Ohio.

Many say the death penalty is a deterrent. Sitting Ohio Supreme Court Justice Paul Pfeifer disputes that argument.

Justice Pfeifer was a cosponsor of Ohio's original capital punishment statutes as a State Senator. As a member of Ohio's Supreme Court, he has reviewed death penalty cases in Ohio for nearly two decades. Few have more experience with the death penalty in Ohio than Justice Pfeifer.

He and others, in their years of experience, have not seen evidence to support the claim that the death penalty is a deterrent.

Terry Collins, the former director of the Ohio Department of Rehabilitation and Correction, also does not see the death penalty as a deterrent. "There is no statistical data to prove it deters crime," said Mr. Collins in an interview in the *Plain Dealer* on January 27, 2011.

There are others that say the death penalty is necessary as the most extreme punishment for the most extreme crimes.

Ladies and gentlemen, if a death penalty sentence is handed down, a heinous crime is said to have been committed. And, yes, many say the perpetrator of such a crime deserves to suffer cruel and unusual punishment. But, I ask you how much cruel and unusual punishment do we, as a moral society, wish to endorse—particularly when it comes to taking the life of another human being.

Once again, going back to the sources with the most experience concerning the death penalty, both Terry Collins and Justice Pfeifer believe that life without parole is a much more punitive penalty than a death sentence. "A comfortable, easy death to me is less punishment than life without parole," said Justice Pfeifer referring to death by lethal injection in a Columbus Dispatch article on December 15, 2011.

Last Thursday, I and other legislators visited the newly established death row at the Chillicothe Correctional Institution. We were told some of the inmates had not touched grass or seen open sky for over 20 years. Would you or anyone not think that is cruel and unusual punishment if faced with such a fate? A life of confinement in a 7 foot wide by 10 ½ foot long cell with a narrow, hard bunk and a toilet, without any privacy for its use, may be why some inmates prefer to proceed with their death sentence rather than continue such an existence.

Senators, certainly none of us would ever imagine the heart-breaking loss felt by families of the victims of those inmates.

Few probably think of the families of the perpetrators on death row.

On our tour of the visitors' area last Thursday, we witnessed an inmate visiting with his elderly parents. I also noticed the stacks of children's books available for inmates to share with their children who come to visit. Can you imagine young children visiting a parent who is waiting to be killed by our system?

It was visitor's day when we were there and I think few would take comfort or feel vindication in seeing the large number of elderly family members in the waiting area at the Chillicothe Correctional Institution's death row as we were leaving.

Going back to the recent case of Joe D'Ambrosio, prosecutors and the Ohio Attorney General used public resources to pursue his wrongful conviction through numerous filings. Mr. D'Ambrosio was freed in March of 2010, and again prosecutors and the Ohio Attorney General continued filing appeals until the final Supreme Court ruling last week.

Mr. D'Ambrosio spent 21 years on death row for a crime committed by another man.

In addition to the legal costs for the state associated with the appeals process, of the six exonerated persons, two have been paid a total of \$4,000,000 in compensation by the State of Ohio. Dale N. Johnston, another exonerated individual who spent seven years on death row for two murders he did not commit, is currently in the process of seeking compensation from the State as well.

Resources expended by Ohio on the numerous death sentence appeals, it seems to me, would be better used to educate would-be offenders, particularly the young, and to steer their lives in a better direction.

Attached to your copy of my testimony is a December 20, 2011 article by Susan Estrich, a law professor and syndicated columnist, titled: *A second look at the death penalty*. In it, California's Chief Justice takes the position that the death penalty's ineffectiveness as a deterrent and cost for rights of appeal no longer make sense for California. Fellow Senators, does it make any more sense for Ohio?

If Senate Bill 270 becomes law, Ohio will join sixteen other states that no longer use capital punishment.

Thank you, Chairman Wagoner and Members of the Senate Judiciary Committee, for allowing me to speak on behalf of Senate Bill 270 today. I will be happy to answer any questions that you may have at this time.



## Susan Estrich: A second look at the death penalty

Susan Estrich

2011-12-30 11:29:01

I still remember back in 1988, sitting in a Chinese restaurant when then-Gov. Bill Clinton took a napkin and listed on one side the Democratic governors who were against the death penalty and, on the other, those who were for it. In its time, the issue was the third rail in American politics — the line that divided those who could win because they were considered tough on crime and those who would face electoral problems. A few years later, my friend Kathleen Brown was trounced in the governor's race in California in large part because she opposed the death penalty.

Things have changed. Kathleen's brother, Jerry, is now California's governor. Barack Obama is now president. And last month, California's new and very conservative chief justice, Tani Cantil-Sakauye, told a reporter that she had come to question the death penalty not because she thought it immoral for the state to take a life, and not even because she thought it might be administered to those who were in truth not guilty, but because it's too expensive and ineffective.

"I don't think it is working," the Republican appointee said. "I don't know if the question is whether you believe in it anymore (and she said she did.) I think the greater question is its effectiveness, and given the choices we face in California, should we have a merit-based discussion on its effectiveness and costs?"

In California, as in many states with large numbers of people on death row, more inmates are likely to die of old age than to meet death for their crimes.

Appeals are guaranteed as a matter of right in death penalty cases, but there is a dire shortage of lawyers willing to handle them. The average waiting time for lawyers to handle the first appeal is five years. Litigation has put a halt to executions until the courts and the state can agree on an effective procedure for executions, further increasing the cost of what has become more of a symbol than anything else.

For years, proponents and opponents of the death penalty have been divided over whether the death penalty actually deters murders. But both sides have to agree that deterrence requires that any penalty be swift and certain, or at least reasonably so. The death penalty just isn't.

And don't blame the lawyers. Any lawyer representing an inmate facing death should take his work particularly seriously. But most of these inmates are indigent, meaning the state must pay the costs of representation. While lawyers will tell you that if they do their jobs right, what they get reimbursed is far less than the cost of the time spent, it still costs taxpayers a bundle.

In the old days, when the penalty was imposed more sparingly, it was far easier to recruit lawyers who regardless of their own point of view saw this kind of representation as a high calling. But that's no longer true. So today you have longer waits and often

less-able lawyers (in one case that went to the Supreme Court, the lawyer fell asleep and the Court nevertheless upheld the penalty) and, in turn, even more litigation about the efficacy of counsel.

In short, the system is a mess — less because of reasonable doubt than of costs and delays.

A new ballot measure has been proposed in California that would replace the death penalty with life without possibility of parole. Other states are considering similar measures. Twenty-four years after Bill Clinton marked up that napkin, the time has come for a reasoned debate about the death penalty that focuses not on symbolism — not on whether a candidate is "tough on crime" — but on cost and effectiveness.

Syndicated columnist Susan Estrich is a professor of law, best-selling author and former Democratic political strategist.

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**SENATOR  
EDNA BROWN**  
MINORITY WHIP  
11TH DISTRICT

September 29, 2011

**Committees**

Health, Human Services and Aging  
– Ranking Member  
Agriculture, Environment and  
Natural Resources  
Financial Institutions  
Insurance, Commerce & Labor  
Rules & Reference  
State and Local Government and  
Veterans Affairs

Governor John Kasich  
77 S. High Street, 30th Floor  
Columbus, Ohio 43215

Dear Governor Kasich:

It is my long-held belief that the possibility of putting an innocent person to death is one that a moral society should avoid.

I am calling on you as a thoughtful leader to institute an immediate moratorium on all executions currently scheduled – at least until the review of Ohio's death penalty process called for by Ohio Supreme Court Chief Justice Maureen O'Connor is complete.

A nationwide wave of renewed debate over state executions has arisen, namely because of the recent controversial Troy Davis case in Georgia. It is possible a man was convicted and put to death for a crime he did not commit. If his innocence is eventually proven, his punishment can never be undone.

U.S. District Judge Gregory Frost recently ordered the delay of an execution so the Department of Rehabilitation & Corrections can review Ohio's death penalty process. Attorney General DeWine did not appeal the decision. On September 20<sup>th</sup> you personally announced the delay of Billy Slagle's execution until 2013. This became the third delay of an execution in the past two months.

On September 27<sup>th</sup> you commuted Joshua Murphy's death sentence to life without parole and cited mental health issues. Mental health is seldom talked about in these instances and deserves to be given more credence when looking at the application of the death penalty.

State Representatives Nickie J. Antonio and Ted Celeste are co-sponsors of HB160, which abolishes capital punishment in Ohio. I have requested the drafting of companion legislation that I will introduce in the Senate.

You are already actively involved in these matters. The Ohio Supreme Court and both chambers of the General Assembly are as well. All three of the state's branches of government are locked into this debate. The time is ripe for renewed action on this archaic practice.

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Bringing me full circle was a visit to death row this morning, which was planned through the Department of Rehabilitation and Corrections. The tour was haunting and it reinforced my resolve to work toward abolishing capital punishment in Ohio.

For these reasons I urge you to use the power of your office to place a moratorium on all executions currently scheduled.

Thank you very much, Governor Kasich, for your consideration of this request. I hope to keep an open dialogue with you on this issue.

Sincerely,

State Senator  
Ohio Senate District 11