

**Testimony Submitted to the  
New Hampshire House of  
Representatives**

**Committee on Criminal Justice  
and Public Safety**

**Hearings on HB 455 – Changing the penalty for  
capital murder to life imprisonment without the  
possibility for parole.**

**February 19, 2019  
Concord, New Hampshire**

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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 House Bill 455, which would change the penalty for capital murder to life imprisonment without the possibility for parole.

My name is Robert Dunham. I am the Executive Director of the Death Penalty Information Center (DPIC),<sup>1</sup> a non-profit organization that provides information and analysis on capital punishment.<sup>2</sup> DPIC does not take a position for or against the death penalty *per se*, but we are critical of the way in which it has been administered. Our goal today is not to tell you how to vote on House 455, 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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<sup>2</sup> 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 four years, the fewest number of new death sentences imposed in any three-, four-, five-, or ten-year period since states began re-enacting death penalty statutes in 1973 and the fewest number of executions over any of those time spans in more than a quarter century. New death sentences are down by more than 85% since the mid-1990s. Executions have fallen nearly 75% since 1999.<sup>3</sup>

In 1996, there were 315 new death sentences imposed across the United States. In 2018, there were 42.<sup>4</sup> For historical context, consider this: every one of the 13 original U.S. states set or matched a record low for the number of new death sentences imposed. Those 13 states combined produced just one new death sentence, and the trial court in that case has already indicated that it will overturn that death penalty. There were 98 executions in the U.S. in 1999; in 2018, there were 25, more

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<sup>3</sup> See Death Penalty Information Center (DPIC), *The Death Penalty in 2018: Year End Report* (2018), available at <http://deathpenaltyinfo.org/documents/2018YrEnd.pdf>. The graphic of death sentences and executions since 1973 in the exhibits to this testimony illustrates this long-term decline. See Exhibits, page 1 (The Death Penalty's Long-Term Decline).

<sup>4</sup> See Exhibits, page 2, top graphic (Death Sentences in 2018). 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.

than half of which took place in one state, Texas.<sup>5</sup> The other 49 states carried out fewer executions than in any year since 1991.

The breadth of the decline is stunning. 36 states imposed no death sentences at all: 19 non-death penalty states, plus 17 of the 31 states that authorized capital punishment in 2018. Two other death-penalty states – California and Pennsylvania, whose 900 prisoners comprise 1/3 of the nation’s death row – also set or matched record lows. Altogether, 19 of the 31 death-penalty states (61%) experienced record lows and another six (19%) came within one sentence of their record lows.<sup>6</sup>

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.<sup>7</sup> Eighty percent of the counties had no one on death row and 85% had not executed anyone in the modern era.<sup>8</sup> The death sentences imposed in 2018 showed that even these counties are imposing the death penalty less frequently. Last year, 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.<sup>9</sup> Yet, disturbingly, the

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<sup>5</sup> DPIC, *The Death Penalty in 2018*; see also DPIC, *Executions by Year*, <http://www.deathpenaltyinfo.org/executions-year>; Exhibits, page 2, bottom graphic (Executions in 2018).

<sup>6</sup> Robert Dunham, *DPIC Analysis: Record-Low Death Sentencing in Most of the Country in 2018*, Death Penalty Information Center (Dec. 28, 2018), <https://deathpenaltyinfo.org/node/7284>; see also Exhibits, page 3, top graphic (Record-Low Death Sentences in 19 States in 2018).

<sup>7</sup> 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>.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *DPIC 2018 Year End Report*.

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 25 executions in 2018 showed that at least 18 of the prisoners executed (72%) had significant mental, emotional, or cognitive impairments, suggesting that the most vulnerable, rather than the most morally culpable, are disproportionately likely to be executed.<sup>10</sup>

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.”<sup>11</sup> In October 2018, Gallup reported support for capital punishment at 56%, within one percentage point of the lowest level of death-penalty support since 1972. And 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.<sup>12</sup>

HB 455 comes at a time in which state courts and legislatures are moving away from capital punishment. Eight states have legislatively or judicially abolished

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<sup>10</sup> *Id.*; see also Exhibits, at 3, bottom graphic (Prisoners Executed in 2018).

<sup>11</sup> 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>.

<sup>12</sup> *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](https://deathpenaltyinfo.org/Fewer_than_Half_of_Americans_Believe_Death_Penalty_Applied_Fairly). In Spring 2018, the Pew Research Center national poll reported death-penalty support at 54%, the second lowest since it began polling on the topic in the 1990s. DPIC, *Pew Poll Finds Uptick in Death Penalty Support, Though Still Near Historic Lows* (June 12, 2018), <https://deathpenaltyinfo.org/node/7121>.

the death penalty this century,<sup>13</sup> and more have abandoned it in practice.<sup>14</sup> This is particularly so in New England and across the Northeast, where no state has ever executed a prisoner who did not voluntarily abandon his appellate rights.<sup>15</sup> 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.<sup>16</sup>

What the data tells us is that, for all practical purposes, there has been no such thing as a working death penalty anywhere in the northeastern portion of the country, much less New England, in the past half century. The use of the death penalty has

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<sup>13</sup> 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). **Nebraska** and this legislature also legislatively repealed the death penalty, but Nebraska's 2015 repeal was halted by referendum in November 2016 and Governor Sununu vetoed last year's repeal vote in New Hampshire.

<sup>14</sup> Execution moratoria are in place in Colorado, 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, eight other death penalty states, plus the federal government and the U.S. military, have not carried out any executions in more than a decade. See DPIC, *Jurisdictions with no recent executions*, <https://deathpenaltyinfo.org/jurisdictions-no-recent-executions>.

<sup>15</sup> See Exhibits, page 4, top graphic (U.S. Executions 1976-2018), bottom graphic (Non-Voluntary U.S. Executions 1976-2018); *id.*, page 5 (Non-Voluntary Executions, Northeast U.S. 1976-2018).

<sup>16</sup> 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>.

become increasingly geographically isolated as time has gone on and seems based more on historical and cultural factors than on an any penological or criminal justice need.

## **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** – It is no longer debatable that innocent people can and do get sentenced to death. Since 1973, 164 men and women who were wrongly convicted and sentenced to death have been exonerated.<sup>17</sup> Some clearly innocent prisoners, like Carlos DeLuna, Rubin Cantu, and Cameron Todd Willingham, have been executed.<sup>18</sup> 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 are wrongly condemned in these jurisdictions.

**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.<sup>19</sup>

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<sup>17</sup> See DPIC, Innocence and the Death Penalty, <https://deathpenaltyinfo.org/innocence-and-death-penalty>.

<sup>18</sup> See DPIC, Executed But Possibly Innocent, <https://deathpenaltyinfo.org/executed-possibly-innocent>.

<sup>19</sup> 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/>.

**Costs** – Studies consistently show that the death penalty costs more than even the harshest alternative punishments such as life without the possibility of parole.<sup>20</sup>

**Discrimination** – New Hampshire 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. However, there is persistent evidence of racial and geographical arbitrariness or bias in the administration of capital punishment across the country, and it is unrealistic to assume that New Hampshire is any better at eradicating it than are other states.

**Public Safety and Deterrents** – 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.<sup>21</sup> Studies show that “[t]he certainty of apprehension, 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.”<sup>22</sup>

When Governor Sununu vetoed the death-penalty repeal legislation last year, he did so in a signing ceremony flanked by members of the state’s law enforcement community. Given the importance of this issue and reaching a legislative decision

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<sup>20</sup> See DPIC, *Costs of the Death Penalty*, <https://deathpenaltyinfo.org/costs-death-penalty#financialfacts>.

<sup>21</sup> See DPIC, *Facts about Deterrence and the Death Penalty*, <https://deathpenaltyinfo.org/facts-about-deterrence-and-death-penalty>.

<sup>22</sup> 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).

based on facts, rather than myths, I would like to concentrate my remarks on one aspect of the deterrence debate: whether the death penalty is necessary to make the public and the police safe.

## **IS THE DEATH PENALTY NECESSARY TO PROTECT THE PUBLIC AND DOES IT MAKE POLICE OFFICERS 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 on 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, we analyzed three decades of FBI murder data.<sup>23</sup> 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:

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;

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<sup>23</sup> 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 are in the process of updating the analysis to include homicide and population information through 2017. The graphics in the Exhibits are based on the complete range of information from 1987 through 2017.

2. Non-Death Penalty States: states that abolished the death penalty at some point in the 20<sup>th</sup> 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.

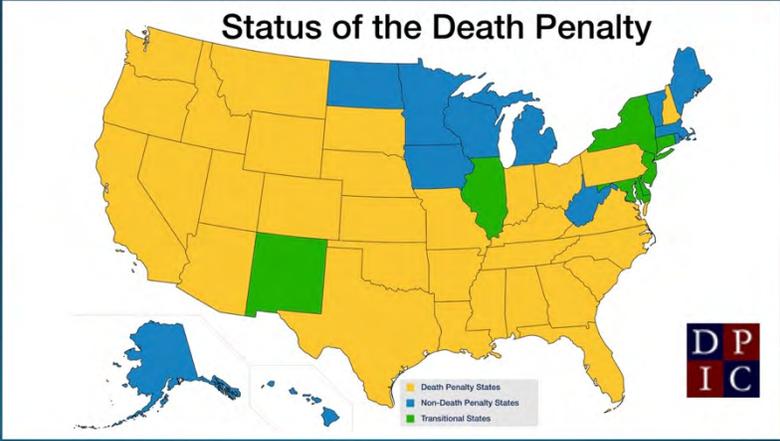
We wanted to find out whether murder rates and trends differed depending upon whether or not a state had the death penalty and we wanted to find out if there would there be a “parade of horrors” following the abolition of the death penalty?

- 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.”<sup>24</sup>

**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.**



The map, titled "Status of the Death Penalty," shows the following distribution of states: Death Penalty States (yellow) include Washington, Oregon, California, Nevada, Idaho, Utah, Arizona, New Mexico, Texas, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Wyoming, Colorado, Montana, Wyoming, Colorado, Kansas, Nebraska, South Dakota, North Dakota, Oklahoma, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, and Alaska. Non-Death Penalty States (blue) include Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine. Transitional States (green) include Illinois, New Mexico, and New Jersey. The DPIC logo is located in the bottom right corner of the map area.

## 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 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

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<sup>24</sup> 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>.

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 bottom of page 7 of the Exhibits shows 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 the 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.

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 at the top of page 7 in the Exhibits. 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 that 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:<sup>25</sup>

<b>Murder Rates (1987-2015)</b>						
<b>Category of State</b>	<b>Murder Rate/100,000 Population</b>	<b>Murder Rate in Comparison to:</b>				
		<b>United States</b>	<b>Death Penalty States</b>	<b>Non-Death Penalty States</b>	<b>Transitional States</b>	
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	

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

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<sup>25</sup> The charts in this testimony are based on an analysis of the 29 years of murder and population data through 2015. We have since obtained the data for 2016 in 2017, which we have included in the graphics.

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.<sup>26</sup> 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.

New Hampshire has the lowest homicide rate in the nation. But that is not because it has a death penalty (one that it doesn't use). New Hampshire's homicide rate is characteristic of the New England states, which collectively have the lowest

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<sup>26</sup> *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](https://deathpenaltyinfo.org/files/pdf/Life-After-Death-Penalty_Transcript.pdf).

homicide rates in the country.<sup>27</sup> Every state in New England has a homicide rate that is lower than the homicide rates of the death penalty states, the non-death penalty states, and the transitional states as a whole.<sup>28</sup>

### **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:<sup>29</sup>

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<sup>27</sup> See Exhibits, page 8, bottom graphic (New England Murder Rates Compared to National Regions, 1987-2017). The Department of Justice divides the United States into four regions: South, West, Midwest, and Northeast. It classifies New England as part of the Northeast region. Over the course of the last 25 years, the Northeast has consistently had the lowest homicide rate of any region in the country. And every state in New England has a homicide rate that is lower than that of any of the Department of Justice's national regions.

<sup>28</sup> See Exhibits, page 9 (New England Murder Rates Compared to National Death Penalty Status, 1987-2017).

<sup>29</sup> 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

<b>Officer Murder Rates (1987-2015)</b>						
<b>Category of State</b>	<b>Murder Rate/1,000,000 Population</b>	<b>Murder Rate in Comparison to:</b>				
		<b>United States</b>	<b>Death Penalty States</b>	<b>Non-Death Penalty States</b>	<b>Transitional States</b>	
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

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level avoids injecting mathematical errors from rounding and makes the numbers easier to grasp visually.

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 suggests that having the death penalty has not made officers safer. As with murders generally, the FBI homicide data 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 are 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. By contrast, death-penalty states comprised 21 of the 24 states with the highest rates of officers murdered in the line of duty.<sup>30</sup>

The data from the transitional states also undermines 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.

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<sup>30</sup> See Exhibits, page 11, top graphic (Officer Victim Rate per 100,000 People 1987-2017).

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, the seven states that abolished the death penalty this century show no post-abolition pattern of increased officer-victimization, nor any consistent deviation from national trends.<sup>31</sup>

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 does the data 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 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.

New Hampshire illustrates both the political dimension of police safety in the death penalty debate and the absence of evidence that the death penalty does anything to protect police. As with murder rates generally, the rate at which police officers are killed in the line of duty is lower in the Northeast than in any other region of the country and, for the most part, is even lower across New England.<sup>32</sup> The

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<sup>31</sup> *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](https://deathpenaltyinfo.org/files/pdf/Life-After-Death-Penalty_Transcript.pdf).

<sup>32</sup> See Exhibits, page 12, bottom graphic (New England Officer-Victim Rates Compared to National Regions 1987-2017); *id.*, page 12, top graphic (New England Officer-Victim Rates 1987-2017).

exception is New Hampshire, which is both the only state in New England with a death penalty and the only New England state whose officer-victimization rate is higher than the average as a whole for death-penalty states, non-death-penalty states, and transitional states.<sup>33</sup> New Hampshire's officer-victimization rate is higher than the rate in every region of the country except the South. Every other state in New England has a officer-victimization rate that is lower than the officer-victimization rates of every region in the country and of the rates in the death penalty states, the non-death penalty states, and the transitional states as a whole. Compared to every other state in New England, the death penalty has not made New Hampshire law enforcement officers safer.

### **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

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<sup>33</sup> See Exhibits, page 13 (New England Officer-Victim Rates Compared to National Death Penalty Status 1987-2017).

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.<sup>34</sup>

Here are the numbers.

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<sup>34</sup> See Exhibits, page 15, bottom graphic (Officer Victims as a Percentage of all Murders 1987-2017).

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	<b>0.327%</b>	1.08 times higher	X	1.01 times lower	1.62 times higher	
Non-Death Penalty States	<b>0.332%</b>	1.09 times higher	1.01 times higher	X	1.65 times higher	
Transitional States	<b>0.202%</b>	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.

New Hampshire again stands out as evidence that the death penalty does not provide any greater measure of safety to law enforcement. As with officer-

victimization rates, the only state in New England with the death penalty was the state in New England with the highest percentage of murders involving police officers.<sup>35</sup> In fact, with the death penalty, the percentage of murders involving police officers in New Hampshire was higher than it was in every region of the country, including the South.<sup>36</sup> The data suggest that having the death penalty has not made New Hampshire law enforcement officers safer.

### **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 shows 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 suggests 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. It also suggests that when abolition occurs, murders don't rise, nor do the rates or percentages at which police officers are killed. The data shows 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.

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<sup>35</sup> See Exhibits, page 16, top graphic (Officers as a Percentage of all Murders, New England States, 1987-2017).

<sup>36</sup> See Exhibits, page 16, bottom graphic (Officers as a Percentage of all Murders, New England States and National Regions, 1987-2017); *id.*, page 17 (Officers as a Percentage of all Murders, New England States and National Death Penalty Status, 1987-2017).

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. Whether a state has a death penalty, has no death penalty, or abolishes a death penalty it used to have 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 one of "Who do we, as a state, want to be?"

New Hampshire is proud and independent and forges her own path. But does she want her path and the image it projects to the rest of the world to be more like Vermont, or Rhode Island, or Massachusetts, or Maine or more like Alabama and Arkansas and Oklahoma and Texas?

These are issues this body should address in deciding how to proceed regarding House Bill 455 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 New Hampshire.