

Testimony Submitted to the Louisiana House of Representatives

Committee on Administration of Criminal Justice

**Hearings on HB 101 – Eliminating the death
penalty for offenses committed on or after
August 1, 2017**

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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 101, regarding eliminating the death penalty for offenses committed on or after August 1, 2017.

My name is Robert Dunham. I am the Executive Director of the Death Penalty Information Center.¹ We are a national non-profit organization that provides information and analysis on issues related to capital punishment in the United States. The Center does not take a position for or against the death penalty. We serve as a resource for those who are interested in capital punishment.²

I know you have a full schedule of witnesses, so in my testimony, I hope to offer you a national perspective on just a few policy issues that I believe are relevant to your choice as to whether to keep or to eliminate the death penalty in Louisiana. I would be happy to answer any questions that members of the committee may have at any time, either today or by later correspondence.

Throughout its history in America and in Louisiana, the death penalty has been plagued by intractable questions relating to its reliability or error-proneness,

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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.

its fairness or arbitrariness, and cost-effectiveness. There are other issues, too, but you have other witnesses to discuss those.

Innocence

The first question about reliability is, with this most ultimate and irreversible of all punishments, can we trust the system to condemn only the guilty and to protect the innocent. As a nation, we have executed 1,452 men and women in the modern era of capital punishment.³ During that same period, 159 men and women who had been wrongly convicted and sentenced to death have been exonerated. That is one exoneration of a person wrongly condemned for every 9.13 executions.

The numbers in Louisiana are even starker. Louisiana has had [11 exonerations](#) and [28 executions](#), or one exoneration for roughly every 2½ executions. And if we limit the inquiry to convictions obtained after 1976, under Louisiana's current death penalty statute, there are still 10 exonerations, one for every 2.8 executions. If we focus on even more recent times, since the turn of this century, Louisiana has had four times as many innocent men exonerated as it has had executed: two condemned men have been executed, while eight innocent men have been exonerated.

³ The "modern era" is measured from the date the U.S. Supreme Court declared all existing death penalty statutes unconstitutional in *Furman v. Georgia* in 1972 and states began enacting new death penalty statutes to comply with the Court's constitutional demands.

And in the period for which the National Registry of Exonerations has been tracking exonerations — which I believe is 1989 — Louisiana has sentenced more innocent men to death *per capita* than any other state in the country.

Errors

Last year, a major study of Louisiana's death penalty⁴ disclosed some revealing, but extremely disturbing, facts about the unreliability and ineffectiveness of Louisiana's death penalty system. It showed, first, that among all cases that had reached a final judicial resolution — and so permitted us to draw conclusions about the ultimate success or failure of the system at accomplishing its aims — Louisiana had an astoundingly high error rate. The study found that 155 of the 241 death sentences that had been imposed in Louisiana between 1976 and 2015 had reached a final judicial resolution: either a reversal or an execution. Of these death sentences, 82% had been reversed (127 cases), as compared with 18% resulting in executions (28).

And the error rate in finally decided cases has only gotten worse since then. There have been no recent executions — indeed, Louisiana has had only one execution in the past 15 years, and that was a prisoner who waived his rights and affirmatively sought to die⁵ — but the Louisiana Supreme Court has reversed

⁴ Frank Baumgartner and Tim Lyman, "[Louisiana Death Sentenced Cases and Their Reversals, 1976-2015](#)," *The Journal of Race, Gender, and Poverty*, Vol. 7, 2016.

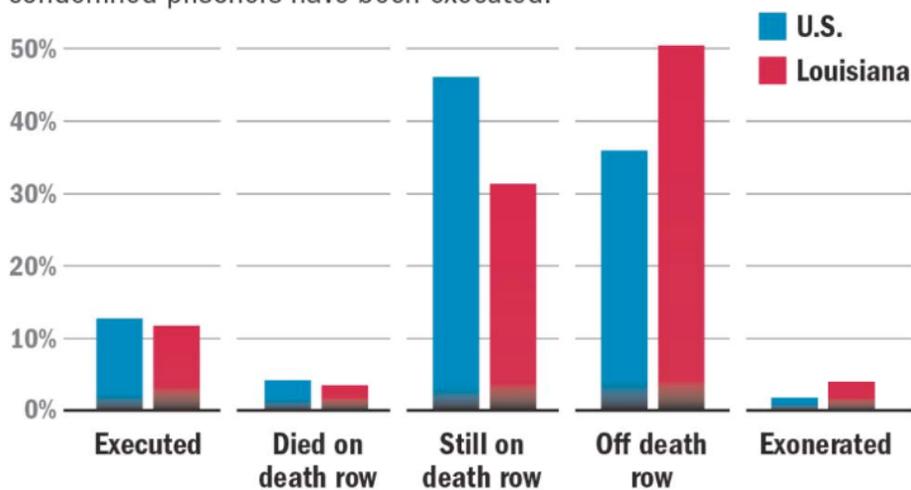
⁵ Gerald Bordelon was executed on January 7, 2010.

several cases on direct appeal, one of which resulted in the exoneration of Rodricus Crawford.

And even when we consider all the cases that are still in the system, one striking fact remains clear: the single most likely outcome of a Louisiana capital case once a death sentence is imposed is not that the defendant is executed; it is that the defendant's conviction or death sentence is overturned and the defendant is no longer on death row.

DEATH SENTENCES RARELY HOLD UP

Compared to the average of other American states that have capital punishment, Louisiana has seen a greater percentage of death sentences overturned and a higher percentage of Death Row inmates exonerated. In part because of those factors, a smaller share of condemned prisoners have been executed.



Source: Analysis by Frank Baumgartner and Tim Lyman

Advocate graphic

The next most likely outcome is that the defendant is still on death row challenging his conviction and sentence. And, if history is our guide, we know that far more often than not, those cases are likely to be reversed.

Louisiana's death penalty cases are plagued with error – whether it be court error, ineffective representation, prosecutorial misconduct, or seeking death against persons who are ineligible for the death penalty because of intellectual disability. Most lay people will say that a system that has been that badly broken for so long a time is beyond repair. But it is up to the judgment of this body to decide whether that is tolerable or desirable or a good expenditure of taxpayer money as a criminal justice policy.

Cost-Effectiveness

The final subject I would like to briefly touch on is cost-effectiveness. Everywhere in the country where studies have been done, it is shown that the death penalty as a criminal justice policy costs more than a system in which the maximum punishment is life without parole. Everywhere. And you have people who can give you cost numbers for Louisiana.

But the bottom line is that since 2004, Louisiana has spent in excess of \$100 *million* on its death penalty system and has nothing to show for it but the highest *per capita* exoneration rate in the country, an extraordinarily high reversal rate, and a single execution of a man who wanted to die.

The high cost is unquestionable. The effectiveness is hotly questioned.

There is no evidence that the death penalty deters murders at all, much less that it has any greater deterrent value than life without parole, which costs

taxpayers much less. Don't just ask any academic. Ask experts in the field. [88% of criminologists](#) do not believe the death penalty is an effective deterrent to crime.

And we commissioned a poll of police chiefs and asked them about ways to reduce violent crime. They [ranked the death penalty last](#) among ways to reduce violent crime and considered the death penalty the least efficient use of taxpayer money.

Currently, there are something in the range of 475-500 murders per year in Louisiana. Louisiana has been averaging 1.2 death sentences per year over the past five years. Capital cases are taking in the range of 3 three years to go to trial, and on average, fifteen years to move through the appellate process. If an execution is to take place for a crime committed on or after August 1, 2017, we are looking at perhaps 18 years before an execution would occur.

Given the rate of error, the risk of innocence, and the availability of a less costly and less risky alternative that does at least as good a job at keeping the public safe, it is for this body to decide whether the costs and risks of the death penalty are worth its perceived benefits.

Thank you for your time.