

## **PROPOSED UACDL POSITION STATEMENT**

The Utah Association of Criminal Defense Lawyers (UACDL) believes that it is time for Utah to end the use of the death penalty. Our members, and other people with experience in the criminal justice system, know that the death penalty has numerous defects:

- It costs the State millions more than a system without the death penalty and rarely results in an execution—Utah has executed only seven people since 1977.
- Because public defenders handle the bulk of capital cases, the extreme costs these cases require place huge burdens on the already paltry budgets that public defender receive.
- The money saved from capital punishment could be used to provide needed treatment for drug offenders and bolster public defender budgets. Research supports increasing services for criminal defendants as a solution to reducing crime and lowering recidivism.
- It diverts resources from more effective crime reduction measures: Police chiefs from around the country have indicated that increasing the number of police officers on the street and reducing drug abuse are both more effective ways to reduce violent crime.
- It fails to meet the needs of surviving families as well as a system where life without parole is the maximum sentence and cases are resolved much more quickly bringing those families a measure of closure.
- The death penalty is imposed in such an arbitrary and discriminatory fashion that the American Law Institute deleted it altogether from the Model Penal Code in 2009.
- The risk of imposing the death penalty on the innocent is too high. Since 1973, at least 156 individuals who had been sentenced to death were later exonerated and declared innocent. Plainly, the risk of executing an innocent person is too high.
- Government has proven unable to regulate it effectively because its problems are too intractable.

Capital punishment costs too much and takes too long. A life sentence is an adequate alternative to the death penalty. It works effectively both to punish offenders and to protect society at a fraction of the cost of the death penalty system. It serves the needs of victims' families better than the death penalty because cases are resolved much more quickly and avoid the years of delays for appeals. No more innocent people will be executed, and taxpayers will save millions of dollars at a time when budgets for other important public services are being slashed.

Since the death penalty was reinstated in 1976, over 100 countries have abolished the death penalty by law or in practice. In the world of Western democracies, only the United States still uses the death penalty, and even here numerous states in the last 10 years have abolished it: Nebraska, New York, New Jersey, New Mexico, Illinois, and Connecticut. It is time for Utah to join the world in ending this ineffective, immoral, and costly practice.

## **ADDENDUM WITH ADDITIONAL INFORMATION**

### **The death penalty is a failed policy which is extremely expensive and ineffective.**

The costs of successfully executing a criminal defendant are staggering. Data compiled for more than 25 years in virtually all of the states studied consistently show that it *costs millions more* to execute someone than to keep them in prison for life. THE FUTURE OF AMERICA'S DEATH PENALTY 411 (Carolina Academic Press 2009).

For example, a 2005 study in New Jersey concluded that the death penalty had additional costs amounting to \$4.2 million per death sentence, or \$28 million per death sentence after reversals. Kansas found that the additional costs to seeking a death penalty were over \$4.26 million per execution. In Maryland, the Urban Institute reported that a case resulting in a death sentence costs \$3 million, almost \$2 million more per case than when the death penalty was not sought, and \$37.2 million for each execution. While a full-fledged cost study has not yet been conducted in Utah, a report obtained from the Department of Corrections and cited in a May 3, 2009 *Deseret News* article stated that, "it is common knowledge that to try, house and execute an offender costs as much as three times what it costs to house an offender for an average life term."

It is important to recognize that it is not the execution itself which is expensive, or that pursuing one execution will cost tens of millions of dollars. Rather these costs reflect the reality that most capital prosecutions never result in a death sentence, and most death sentences do not result in an execution. But the extra expenses begin mounting as soon as counsel is appointed in each potential death penalty case. *Smart on Crime Report* (2009), Death Penalty Information Center.

Death penalty prosecutions cost more because of the courts' properly imposed stringent due process protections to prevent wrongful convictions and executions. Yet despite such efforts, innocent people are often convicted by mistake and placed on death row. *See below*. A shorter appeals process in capital cases, which is not constitutionally permissible, would increase the likelihood of erroneous sentences, and do little to reduce the expenses inherent in the trial stage of murder cases.

Despite maintaining a death penalty system, Utah has conducted only 7 executions since 1977, and none since 1999. The process is expensive and ineffective. Alternatives to the death penalty should be considered.

### **The death penalty system doesn't help the families of victims.**

No one can appreciate the impact of murder on the family and friends of a victim, and no person of good conscience should want to increase their agony. However, because of the extensive constitutional due process requirements in death penalty litigation, trials are lengthy, and appeals can go on for decades. For families of victims, there is no closure.

There are several organizations of murder victim families that agree that the death penalty is not a solution for our society. **Journey of Hope...from Violence to Healing** is an organization led by murder victim family members joined by death row family members, family members of the executed, the exonerated, and others with stories to tell, that conducts public education speaking tours and addresses alternatives to the death penalty. One of its members, George White, who is also a member of **Murder Victims' Families for Reconciliation**, has the unfortunate experience of being a family member of a murder victim, a survivor of attempted murder, and a person who was wrongly convicted of murder and faced the death penalty at trial. George writes:

"I have come a long and torturous journey to where I now stand on the death penalty," recounts George. "As the husband of a murder victim, I now fully recognize that no amount of retaliatory violence will heal the wounds of our loss. And I also understand the problems with our justice system that sadly permit the innocent to be convicted. I was falsely accused and wrongfully convicted of my wife's murder, before my ultimate exoneration. Potentially I could have received a death sentence so I also know that even in the best system of justice, tragic errors can be made. My firm belief is that the death penalty is bad public policy, morally, socially and economically."

Replacing the death penalty with a maximum sentence of life without the possibility of parole has helped victims in New Jersey. As Richard Pompelio, Executive Director of the New Jersey Crime Victims Law Center, said regarding New Jersey's 2007 abolition of the death penalty, "I don't think it's made much of a difference at all other than that some of the cases that were languishing out there are now getting tried. The important thing for crime victims is that the process have an end, and with the death penalty there never was an end."

Families who may think initially that the prospect of an execution will provide solace for their loss are usually disappointed. Most murder defendants will not face death penalty charges, and most defendants who are subject to a capital trial will not receive the death penalty. Furthermore, a Columbia University study found that two-thirds of death sentences were overturned. It is a false promise to tell murder victims' families an execution will provide justice and closure, because the chances of the murderer actually being executed are slim.

Instead, the millions of dollars spent on just one death penalty case could be used to support victim assistance programs, which are frequently under-funded.

**Maintaining a death penalty system diverts resources that could be spent on truly effective crime prevention and detection activities.**

In a 2009 national poll of 500 police chiefs, the police chiefs ranked the death penalty last in their priorities for effective crime reduction. *Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis*. The majority of the police chiefs said they do not believe the death penalty acts as a deterrent to murder, and they rated it as one of the most inefficient uses of taxpayer dollars in fighting crime.

If the death penalty were repealed, the savings could be used for more beneficial and cost effective programs such as increased law enforcement, resulting in reduced crime rates overall. For example, a state official in New Jersey said that the \$11 million spent on the death penalty in 2005, with no executions, could have paid for the deployment of 160 new police officers. THE FUTURE OF AMERICA'S DEATH PENALTY at 412).

Police Chief James Abbott (NJ) said that

“I learned that the death penalty throws millions of dollars down the drain—money that I could be putting directly to work fighting crime every day.... Give a law enforcement professional like me [that money], and I'll show you how to reduce crime. The death penalty isn't anywhere on my list.”

Additionally, victim advocates in neighboring Colorado argued that money that funded capital punishment would be better spent investigating the state's backlog of 1,400 unsolved “cold case” murders.

Utah, like many other states struggling under the national economic recession, has fewer resources available for education, health care, and law enforcement. In a recent article on FOXNews.com titled, *Just or Not, Cost of Death Penalty a Killer for State Budgets*, the reporter wrote that “Every time a killer is sentenced to die, a school closes,” and stated, “That is the broad assessment of a growing number of studies taking a cold, hard look at how much the death penalty costs in the 35 states that still have it.”

Money wasted on the flawed and ineffective death penalty system could be better used to fund these necessary societal needs instead.

**The death penalty is applied in an arbitrary and discriminatory manner that is socio-economically, geographically and racially biased**

There are few things more randomly applied than the death sentence. In 1972, the United States Supreme Court declared the death penalty unconstitutional – cruel and unusual under the Eighth Amendment – based on its arbitrary and discriminatory application. Justice Potter Stewart, in a concurring opinion, observed, “the petitioners are among a *capriciously selected random handful* upon whom the sentence of death has in

fact been imposed,” and concluded that the Constitution cannot tolerate sentencing procedures that allow the penalty to be “*so wantonly and so freakishly*” inflicted. *Furman v. Georgia*, 408 U.S. 238 (1972),

In 1976, the high court upheld new capital punishment laws, ostensibly designed to limit the application of the death penalty to only the worst cases and to provide for its consistent application. Nevertheless, there is evidence that the death penalty is far from being consistently applied. Many factors other than the gravity of the crime or the culpability of the offender appear to affect death sentences, *including and especially geography, race, and lack of money to hire competent defense counsel.*

Despite the Supreme Court’s best efforts it does not seem possible to devise a “perfect” death penalty system. In 1994 Justice Harry Blackmun wrote in a dissent that

“[F]or more than 20 years I have endeavored – indeed, I have struggled – along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor.... I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed....[N]o combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question – does the system accurately and consistently determine which defendants deserve to die? – cannot be answered in the affirmative....”

Because of the many flaws in our death penalty system, in 2009, the American Law Institute, which had endeavored for many years to develop such “procedural and substantial rules” for the “fair” application of the death penalty, *deleted it altogether from the Model Penal Code*. This is significant because the Model Penal Code has been the primary guide to states in drafting their death penalty statutes. The A.L.I. eliminated the death penalty from the Model Penal Code “in light of the current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment.”

### **Many innocent people have been condemned to die**

There is indisputable evidence that despite the extra procedural safeguards provided in death-eligible cases, the death penalty process is fraught with error. Innocent people have been convicted and sentenced to death. According to the Death Penalty Information Center, since 1973, *140 people in 26 states have been exonerated from death row with evidence of their innocence.*

It is difficult to determine how many innocent people have been executed, but we can all agree that even one is one too many. Whatever one’s views on the propriety of maintaining a death penalty system, we should all be able to agree that a system which allows innocent people to be condemned to die is unacceptable.

**The appellate processes that are in place are critically important, even when they take a long time, because a high percentage of capital cases have reversible error.**

To fully appreciate the importance of the role of state habeas and thorough judicial review of death sentences, one may review the Columbia University studies by Professor James S. Liebman and his assistants, “A Broken System, Error Rates in Capital Cases,” and “A Broken System II: Why There is So Much Error in Capital Cases, Questions and Answers.” The studies may be found on the internet at: <http://www2.law.columbia.edu/instructionalservices/liebman/> and <http://www2.law.columbia.edu/brokensystem2/>.

The Liebman studies are statistical analyses of 5,760 cases, all cases in our state and federal courts between 1973 and 1995 wherein the death penalty was given. The studies found that prejudicial error occurred in sixty-eight percent (68%) of those death penalty cases. State courts found prejudicial error in forty-seven percent (47%) of the cases, and subsequent federal review of the remaining cases found reversible error in forty percent (40%) of the cases that had withstood state court review. Of the cases wherein death sentences were vacated in state post-conviction proceedings, the Liebman studies found that eighty-two percent (82%) of the defendants were given sentences less than death, and that between seven and nine percent (7-9%) of the defendants were found to be not guilty after retrial. The studies found that the majority of the prejudicial errors in these capital cases related to incompetent counsel who failed to find or assert evidence of innocence or evidence indicating that the death penalty was not lawful, prosecutorial or police misconduct, or misinformed or biased jurors or judges, claims raised in *Menzies’ case*. See *id.*

The Liebman studies demonstrate that death penalty cases most often do involve prejudicial, reversible error, and that is why it is critical that all death penalty cases receive full judicial review in state habeas. See *id.*

**People in the United States and throughout the world increasingly reject the death penalty.**

The great majority of countries of the world have abolished the death penalty in law or in practice. In 1977, only 16 countries had abolished the death penalty for all crimes. As of December 2009, 134 countries have abolished the death penalty in law or in practice.

Only China, Iran, Iraq, and Saudi Arabia had more executions in 2009 than the United States. We do not believe that Utah, or the United States, belongs in such company. And, in the United States, there are signs of opinion turning against the death penalty. Many states don’t have the death penalty and five more states in the last five years have abolished the death penalty. New York’s supreme court declared it unconstitutional in 2007. New Jersey legislatively repealed it in 2007, as did New Mexico in 2009, Illinois in 2011, and Connecticut in 2012. As a state that asserts a duty to demonstrate moral leadership in the world, we should too.

**A death penalty system violates the moral codes of Utah’s religious communities.**

We are encouraged in our hopes of building a broad coalition in Utah by the example of a 1989 interfaith statement regarding the death penalty on the Occasion of Lighting the Torch of Conscience. At that time, twenty major religious groups throughout the country expressed their concerns with capital punishment in words that capture the views of so many in Utah's religious communities:

“We believe that the imposition of the death penalty is inconsistent with our religious values, which include respect for human life, nonviolence, restoration and reconciliation, and the message of God's redemptive love.

We believe that each human is created in the image of God, and thus we believe in the inherent worth of human life and the inalienable dignity of the human estate. The value of human life is not contingent on the moral rectitude of human beings or human institutions.

It is cruel, unjust, and incompatible with human dignity and self-respect. We cannot isolate ourselves from corporate responsibility for every execution, as well as for every victim.

We believe that there are more humane, more effective ways of reducing violent crime. However, our society's false confidence in the effectiveness of the death penalty obscures attention to causes of crime and distracts from efforts needed to find alternative ways to deal with crime and with the improvement of the criminal justice system as a whole. We acknowledge our responsibility to address ourselves to wider issues of systemic injustice.”

**A life sentence works effectively both to punish offenders and protect society at a fraction of the cost of the death penalty system.**

A maximum sentence of life in prison adequately meets the needs of justice and public safety. Jeanne Woodford, former Warden of San Quentin said,

“I worked in corrections for 30 years.... I came to believe that the death penalty should be replaced with life without the possibility of parole. I didn't reach that conclusion because I'm soft on crime. My No. 1 concern is public safety. I wish the public knew how much the death penalty affects their wallets.”

Finally, to quote one of our own state supreme court justices: “Based on our experience, a sentence of life without parole may be less expensive to the state, more miserable for the guilty and more certain for the victims and society.” *Menzies v. Galetka*, 2006 UT 81 ¶ 123, 150 P.3d 480 (J. Wilkins, concurring).