



LEAGUE OF WOMEN VOTERS OF DELAWARE

2400 W 17th Street, Clash Wing, Room 1, Lower Level, Wilmington, DE 19806
lwvde@comcast.net www.lwvdelaware.org

**LEAGUE OF WOMEN VOTERS OF DELAWARE SUPPORTS STRIKING THE DEATH
PENALTY FROM THE DELAWARE CODE.**

February 2023

On January 25, 2023, House Bill 70 was introduced in the General Assembly to strike the death penalty from the in Delaware Code. The death penalty was declared unconstitutional by the Delaware Supreme Court in 2016, but nonetheless remains in the Delaware Code. With the elimination of the death penalty, the statutory penalty for first-degree for an offense that is committed by a person 18 and older will remain imprisonment for life without benefit of probation, parole, or any other reduction in the life sentence.

The Death Penalty is Fundamentally Unfair and Unjust.

The death penalty in the United States has been applied in an unfair and unjust way. First, the death penalty has targeted Black defendants. Second, it has led to the execution of innocent individuals. Third, evidence demonstrates that it is not a deterrent to violent crime. Fourth, the death penalty system is more costly to the public than life imprisonment without parole due to the procedural safeguards necessary in death penalty cases. (Studies in New York and Maryland demonstrated that the cost of a capital trial have far exceeded the cost of a life term in prison¹). Finally, the death penalty is not used in Western European countries and is banned by international treaties.

The death penalty targets minorities. Overall, as of 2019, black and Hispanic people represented 53 percent of death row inmates while representing only 31 percent of the U.S. population.² The Death Penalty Information Center (DPIC) found that exoneration is taking significantly longer for Black defendants who were wrongly convicted and sentenced to death: it took Black death-row exonerees an average of 4.3 years longer to be cleared than their white counterparts. African Americans have accounted for 11 of the last 12 death-row exonerations that have taken 30 years or longer.³

The death penalty may cause an innocent person to be executed. An error in imposing the death penalty cannot be corrected when it is carried out on an innocent person. At least 185 people, who were wrongfully convicted and sentenced to death, have been exonerated, according to the (DPIC), which began looking closely into death-row exonerations in the U.S. in the twenty years since the Supreme Court ruled in *Furman v. Georgia* in 1972, that the death penalty as then administered was unconstitutionally arbitrary and capricious.⁴

¹ N.Y. State Defenders Assn. , “Capital Losses (1982).

² <https://www.americanprogress.org/article/3-ways-1994-crime-bill-continues-hurt-communities-color> (2019).

³ Death Penalty Information Center (DPIC) ,Special Report: The Innocence Epidemic (Fe. 18, 2021, updated Mar.3, 2021) 2022.

⁴ Id.

The death sentence does not deter serious crime. The DPIC found, based on 2020 U.S. homicide data, that murder rates during the pandemic were highest in states with the death penalty and lowest in states that have either abolished it, or have refrained from imposing it via moratoriums. Looked at another way, murder rates in the mostly high death-penalty-usage, high pandemic-murder-rate states ranged from triple to 23 times higher than in the mostly no-death-penalty, low pandemic-murder-rate states⁵ Clearly, the existence of this punishment is not working as a deterrent.

The death penalty process is a lengthy and costly one. The death penalty does not serve the interests of family members of victims since the necessary and lengthy appeals process postpones the realization of justice and, so, can retard the healing process. On average, the appeal process in a death penalty case lasts twelve years.

Internationally, the death penalty is banned. All Western European countries have abolished the death penalty. The International Covenant on Civil and Political Rights (Second Optional Protocol)⁶, which is one of the primary civil rights treatises, requires signatory countries to take all necessary measures to abolish the death penalty. Similarly, the World Council of Churches, in March 1990, proclaimed its unconditional opposition to the death penalty. Likewise, Pope John Paul II in *Evangelium Vitae*, explicitly called for the abolition of the death penalty; a position affirmed by Pope Francis.

In response to these concerns, the League of Women Voters of the US went on record at its 2016 convention as supporting abolition of the death penalty.

Brief History of the Death Penalty in the U.S. Supreme Court.

In 1972, the United State Supreme Court, in *Furman v. Georgia*⁷, declared that the then-existing death penalty laws “constitute[s] cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments [to the U.S. Constitution].” The Court found that the matter in which the death penalty was applied to be “harsh, freakish and arbitrary.”

In 1976, in *Gregg v. Georgia*⁸, the Supreme Court backtracked from abolition to find the “the punishment of death does not invariably violate the Constitution” if its imposition included “objective standards to guide, regularize, and make rationally reviewable the process for imposing the sentence of death.” After the decision in *Gregg*, 38 states and the federal government enacted statues that include the death penalty. One of those states was Delaware.

In the same year as the *Gregg* decision, the Court held in *Woodson v. North Carolina*⁹, that mandatory death sentences were unconstitutional.

⁵ DPIC, Analysis: Pandemic Murder Rates Highest in Death Penalty States (Nov. 8, 2022).

⁶ UN General Assembly, *Second Optional Protocol tot the International Covenant on Civil and Political Rights*, A/RES/44/128 (Dec. 15, 1989).

⁷ 408 U.S. 238 (1972)

⁸ 428 U.S. 153 (1976)

⁹ 428 U.S. 280 (1976)

The Death Penalty in Delaware.

In Delaware, the death penalty was first used in 1662; the method was hanging. In 1958, Governor Boggs signed legislation that prohibited the death sentence in capital cases. The death penalty was reinstated, however, in 1961, overriding the veto of Governor Carvel.¹⁰ Since then, the state's stance on the death penalty has changed with prevailing Supreme Court decisions; repealing it in 1973, only to enact a requirement of a mandatory imposition for first degree murder in 1974 and then repealing that provision in 1977 to conform with *Woodson*.

In 1986, the state abolished a prisoner's option to choose death by hanging (the gallows were physically disassembled in 2003). In 1991, the legislature gave the ultimate authority to decide the sentence to judges in capital cases. In 2002, the U.S. Supreme Court, in *Ring v. Arizona*¹¹, required that juries make the final decision on the imposition of the death sentence.

In the 2015-2016 General Assembly, a bill abolishing the death penalty passed the Senate. The bill was tabled in the House pending the outcome of a decision by the Delaware Supreme Court in *Rauf v. State*¹². The Delaware Supreme Court in *Rauf* found that a decision by a unanimous jury, not a judge, was constitutionally required to impose the death penalty. Following the decision, the sentences of 13 inmates on Delaware's death row were modified and the last two inmates there in 2018 were re-sentenced to life in prison. Throughout this period, only one clemency had been granted. In 2012, Governor Markell granted clemency to death row inmate Robert Gattis, commuting his death sentence to life in prison without parole.

The Need to Strike the Death Penalty from the Delaware Code.

Even though the death penalty was declared unconstitutional by the Delaware Supreme Court in 2016, the capital punishment provisions remain in the Delaware Code.¹³ In 2017, Rep. Steve Smyk introduced a bill to reinstate the death penalty following the death of officers in the February 2017 riot at the James T. Vaughn Correctional Center.¹⁴ The bill failed to receive a committee hearing in the Senate. A similar bill was introduced in 2019 by Rep. Smyk¹⁵ and it too failed. Other bills in that session calling for a revision of the law to include the death penalty¹⁶ and for a constitutional amendment prohibiting the death penalty¹⁷ likewise did not pass.

This history of the death penalty nationally, as well as in Delaware, demonstrates that HB 70 is timely and necessary.

¹⁰ DPI, Delaware, *History of the Death Penalty* (2022).

¹¹ 536 U.S. 584 (2002)

¹² 145 A.3d 430 (2016)

¹³ 11 Del. Code § 4209.

¹⁴ HB 125 (149th G.A.)

¹⁵ HB 165 (150th G.A.)

¹⁶ HB 299 (150th G.A.)

¹⁷ HB 305 (150th G.A.)

In closing, the Leadership Conference on Civil and Human Rights, a coalition of which the LWVUS is a member, found: “State-sanctioned killing is not only inhumane, but in deep conflict with many of our country’s most fundamental democratic principles and civil rights protections.”¹⁸

Passage of HB 70 should be a priority for the 152nd General Assembly.

¹⁸ Excerpt from letter to President Biden from The Leadership Conference on Civil and Human Rights (Feb. 9, 2021). The Leadership Conference’s membership includes more than 220 national organizations dedicated to the promotion and protection of civil and human rights in the United States.