

THE COST OF PUNISHMENT

The expense of the death penalty has lawmakers reconsidering an old debate.

BY RICHARD WILLIAMS

The question of whether capital punishment is an acceptable way to administer justice has long perplexed the nation's lawmakers and divided its citizens.

Traditional arguments pit those who believe the death penalty has no place in a civilized society against supporters who see it as an appropriate deterrent and punishment for the most heinous crimes.

Capital punishment's unstable history demonstrates how contentious the debate has been. In 1972, the U.S. Supreme Court suspended the death penalty on the grounds it violated the Eighth Amendment's prohibition against cruel and unusual punishment. The decision voided existing statutes in 40 states. Then in 1976, the court reauthorized capital punishment, enabling states to reenact their death penalty statutes. Thirty-seven did, but three of those—Illinois, New Jersey and New Mexico—have abolished their laws since 2007. With those changes, 16 states currently do not use capital punishment.



SENATOR
CHRISTOPHER
"KIP" BATEMAN
NEW JERSEY

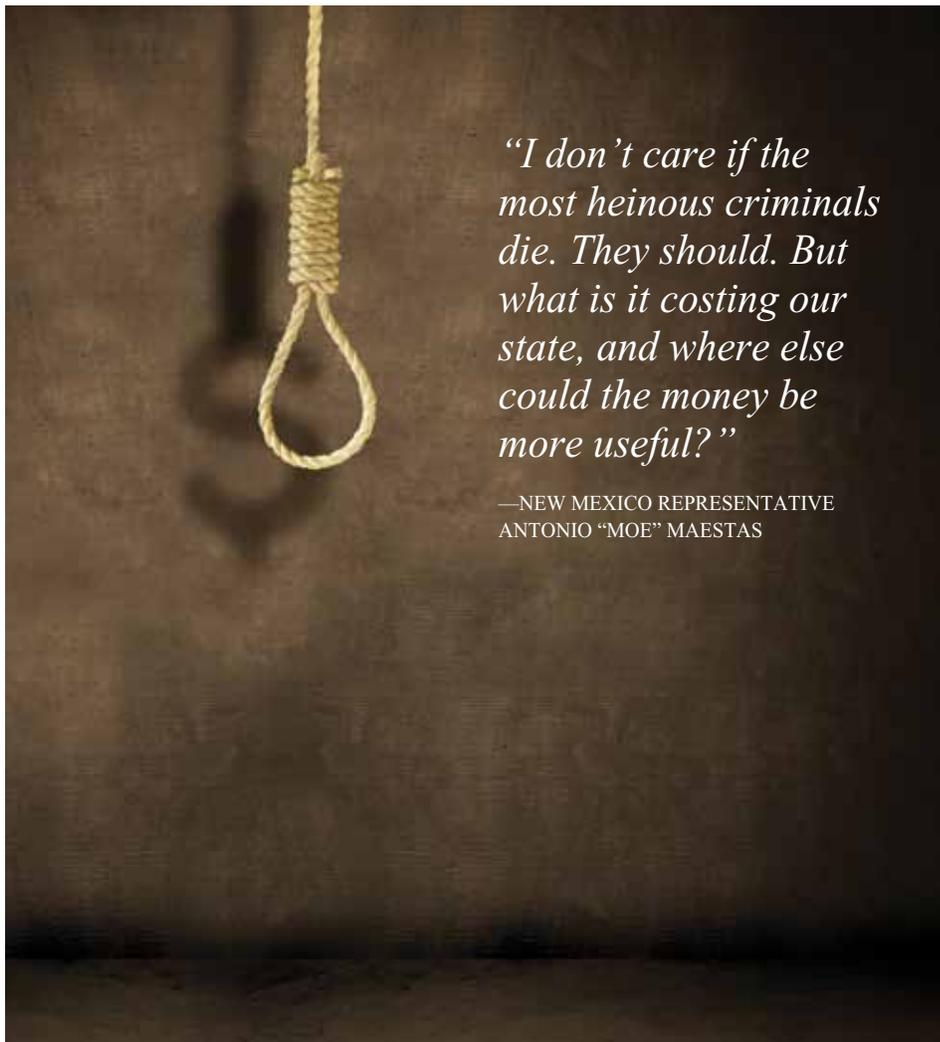
A COSTLY CONVICTION

Although the debate continues to be rooted in philosophical arguments, the recent legislative action abolishing the death penalty has been spurred by practical concerns.

New Jersey abolished its death penalty in 2007 in large part because the state had spent \$254 million over 21 years administering it without executing a single person.

"It makes more sense fiscally to have inmates be sentenced to life imprisonment without parole than to have them sit on death row and to go through the appeals process," says Senator Christopher "Kip" Bateman, the bill's sponsor, "New Jersey is going through tough times finan-

Richard Williams tracks death penalty legislation for NCSL.



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—NEW MEXICO REPRESENTATIVE
ANTONIO "MOE" MAESTAS

cially and any decision that is ethical in nature and promotes fiscal responsibility is a win-win for the state."

New Mexico lawmakers followed in 2009, ending capital punishment over similar cost concerns.

"There is no more inefficient law on the books than the death penalty," says Representative Antonio "Moe" Maestas, co-sponsor of the bill to repeal it. "It sounds



REPRESENTATIVE
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MAESTAS
NEW MEXICO

very callous and shallow to talk about cost, but we spend other people's money, and we have to consider scarce resources."

Maestas believes his perspective is particularly persuasive because it's rooted in pragmatism rather than personal idealism. "The bottom line is, I don't care if the most heinous criminals die. They should. But capital punishment is very expensive for our state, and we have to find the best use of taxpayer dollars and prosecutorial resources. How many other murders and violent crimes cases could be prosecuted with the resources from one death penalty case?"

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—ILLINOIS REPRESENTATIVE JIM DURKIN

WORTH PRESERVING

Many state-initiated analyses—including reports from Michigan, New Mexico and South Dakota—have found administering capital punishment is significantly more expensive than housing prisoners for life without parole.

A study released last month found California has spent more than \$4 billion on capital punishment since 1978, executing 13 criminals. That’s about \$184 million more a year than life sentences would have cost.

Much of the cost results from litigating numerous appeals during the convict’s time on death row, where the average inmate spends 13 years prior to execution.

This lengthy process also influenced Bateman’s decision to sponsor an abolishment bill. “I spoke to many families who went through trying emotional times during the appeals for death row inmates,” he says. “Transferring an inmate from death row to life without parole allows for the aggrieved families to have a sense of calmness in their life without having to relive the tragic events over and over again.”

Many believe, however, the punishment is worth preserving even though it is expensive, if it can be made more manageable.

Illinois suspended capital punishment for 11 years before abolishing it in March 2011. When former Governor George Ryan instituted the moratorium, his intent was to give Illinois time to study and improve its capital punishment procedures.

During the moratorium, the Illinois Capital Punishment Commission and Reform Study Committee made several recommendations for improvement, including requiring the state Supreme Court to review all death sentences, setting minimum standards for DNA evidence, and increasing funding for indigent defense. The committee also recommended a full cost analysis, but it was never



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ILLINOIS

conducted.

The moratorium was not lifted and many, including Representative Jim Durkin, believe the reforms were not given an adequate chance. “This was not about frustration over a system that could not be made workable,” he says. “This is strictly about abolitionists being morally opposed to the death penalty. That’s fine, but be honest about it.”

Without the death penalty, Durkin believes, there is no adequate punishment for the most vicious criminals. “A lot of these other arguments will not matter when someone is faced with the murder of a loved one.”

ONE CRIME CHANGES MINDS

In Connecticut, the state’s capital punishment abolishment debate took place at the same time as the trials for one of the most horrific crimes in the state’s history, a home invasion that resulted in the murder of three members of the Petit family.

One of the killers, Steven Hayes, was convicted and sentenced to death earlier this year. Joshua Komisarjevsky, his accused accomplice, is set to go on trial in September. Many fear that making any change to Connecticut’s current death penalty will make it unavailable to punish these men.

“If there were ever a case to merit the death penalty, this would be it,” says Senator John Kissel. “And if the bill passed, while not retroactive, it could give these men grounds for appeal.”

During the General Assembly’s 2011 capital penalty debate, the Office of Fiscal Analysis reported Connecticut spends \$3.3 million a year on death row cases and has performed only one execution since reinstating capital punishment in 1977. Lawmakers also heard from James Tillman, who spent 16 years in prison before DNA testing exonerated him. Some worry similar tests may one day prove the state has performed wrongful executions.

“A government that cannot guarantee the absolute accuracy of its proceedings should not take to itself the power of taking a human life,” said Senator Martin Looney, referring to the Tillman case.



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“Once someone is killed they are dead forever,” says Senator Edith Prague, a long-time supporter of the death penalty. “Between the cost of capital punishment and the recent exonerations of innocent people, I have decided to generally support repeal.”

But Prague ultimately changed her mind and cast the deciding vote against repeal after meeting with Dr. William Petit, the sole survivor of the Connecticut home invasion that robbed him of his family.

“If repeal comes up in the future, I will support it,” she says. “The difference with this case is that these are the guys who did it. Their identity is not in doubt, and after meeting with Dr. Petit I know this is the right thing to do.”



SENATOR
EDITH PRAGUE
CONNECTICUT

LEGISLATIVE SEE-SAW

With passionate proponents on each side, the death penalty will likely be on a repeal/reinstate see-saw indefinitely. This year, lawmakers in New Jersey and New Mexico have debated legislation to once again reinstate capital punishment. Although it’s unlikely either bill will pass in 2011, the issue will be raised again in the future.

“There are certain heinous crimes that rise to the level of warranting the death penalty—killing a child, murdering a police officer, acts of terrorism,” says Senator Robert Singer, the bill’s sponsor in New Jersey. “Our old law had problems, but problems that can be fixed.”



SENATOR
ROBERT SINGER
NEW JERSEY

SL ONLINE

Read an NCSL LegisBrief about changing attitudes toward the death penalty at www.ncsl.org/magazine.