CRIMINAL JUSTICE

Debating the Death Penalty

Capital punishment divides legislators, but not along party lines.

BY AMBER WIDGERY

Unlike other controversial topics, there is no party line when it comes to the death penalty.

Since 2015, 25 states have enacted more than 60 new laws addressing capital punishment, from expanding or limiting aggravating factors and modifying execution methods to changing trial procedures or repealing the practice altogether.

At NCSL’s 2019 Legislative Summit in Nashville, a panel of lawmakers convened to discuss capital punishment and the beliefs that have influenced the positions they’ve taken on the issue. Utah Representative Paul Ray (R) and Colorado Senator Rhonda Fields (D) support the death penalty, while New Hampshire Representative Renny Cushing (D) and Wyoming Representative Jared Olsen (R) do not. The panel’s diversity of opinion reflected the lawmakers’ deeply personal life experiences more than their party affiliation.

Washington Representative Roger Goodman (D) moderated the discussion.

Goodman: What is the status of capital punishment in your state?

Ray: Utah has only nine people on death row and one of the highest bars in the nation to get there. No death row inmate has ever made an appeal on the grounds of innocence. In three of the last four years, repeal legislation has failed. In fact, each time there is a new bill to repeal the death penalty, we actually expand the death penalty a little bit. As you see from the panel here today, this isn’t a party issue. What I explain to people is that this issue is personal, and you have to let people come to their own decisions.

Cushing: New Hampshire was actually the first legislative body in this century to repeal the death penalty in 2001, but the legislation was vetoed. We finally completed the task [last] year, on May 31. The more New Hampshire legislators learned about capital punishment, the less there was for them to like about it. They concluded that New Hampshire can live without it. In New Hampshire, a substantial number of people don’t trust the government to collect taxes or plow snow, so the last thing they want to do is give it the power to kill. The repeal effort united people who don’t often come together on issues. And at the core of this effort were the voices of family members of murder victims who recognize that capital punishment doesn’t accomplish the one thing they want it to, which is to bring back their loved one.

Fields: Right now, we have capital punishment in Colorado. The reason I support it is because of my own personal story: Of the three people serving on death row in Colorado, two of them murdered my son and his fiancée. It is something we don’t use very often because the crime has to meet very stiff criteria. In my son’s case, the criterion was that he was a witness to a crime and scheduled to testify the next day. It was also a double homicide and the defendant was already doing time for the murder my son witnessed. Efforts to repeal the death sentence [in 2018] were halted due to issues with the process, but the bill is coming back, so there might come a time when Colorado would not have capital punishment as an option.

Olsen: We still have capital punishment in Wyoming. The last time we used it, however, was in 1992. We currently have no one on death row, but there is a case being litigated that may end up sending someone there. A bill to repeal capital punishment has been introduced in Wyoming every year, but it hasn’t gained any traction until [last] year. The bill I brought up gained wide support from leadership in the House. It passed with a substantial majority there, and passed out of committee in the Senate, but failed by just three votes in a Senate floor vote.

Victims often say they are serving a life sentence and that there needs to be a sense of justice. We also hear there is...
no closure in capital cases because of the lengthy trials and appeals. What are your impressions?

Fields: I feel like I’m serving on death row right now. There’s never any closure. There is nothing that is ever going to bring my son back. You lose someone and you can’t be made whole. I grieve every single day because of the loss of my son.

Cushing: As a victim survivor, I hate the word closure. You close on a mortgage not a homicide. No sanction will lift the burden for victims. We will be grieving forever. The execution solution or putting people in prison won’t end the grief.

With two Republicans on our panel, I’d like to ask about how values like protection of life, fiscal responsibility and limited government can be interpreted differently to support divergent positions on the issue of capital punishment.

Olsen: I came to the legislature pro-capital punishment but changed my mind after I dove into the research and found out how much money we spend on it. In Wyoming we appropriate money every year to the death penalty defense fund and have spent tens of millions of dollars on a broken system. The cost is 30% greater to house a death row inmate. We should be investing in training and treatment within our criminal justice system instead.

Ray: We have a fiscal fallacy when it comes to capital punishment. People say it is cheaper to house offenders for life than it is to execute them, but no one runs the numbers on health care expenses for aging prisoners, which can potentially be millions of dollars a year for one inmate. If you are going to argue cost, then we should account for everything and compare apples to apples. I believe there are consequences for choices. If you take innocent lives, the consequence is you deserve the death penalty.

Fields: I’d like to talk about this idea of the cost of justice. Repeal bills in Colorado have not proposed to save the state any money. So, what cost do we put on justice? Just because we don’t use the punishment often doesn’t mean we should eliminate it. That would send a very poor message that no matter how many people you kill everyone gets the same penalty.

Cushing: I’m concerned about creating a hierarchy of victims. I think that is what the death penalty does sometimes, because it is reserved for only the most heinous murders. The reality is that the murder of a loved one is the most heinous. There is often a focus on a few high-profile cases that understandably rip your heart apart, but in New Hampshire there are 130 unsolved homicides. We are willing to spend millions of dollars to prosecute a single case to put someone to death, but for the families of the 130 victims whose murders have never been solved, the question for them is why their loved one isn’t worthy enough to have the state devote funds to try to apprehend those killers who are still out there.

We hear a lot about wrongful convictions and racial disparities in applying the death penalty. Can you comment?

Olsen: Wrongful conviction is one of the key factors that changed my mind. As I dove deeper into the research, I learned that for every 8.7 executions there is one exoneration. There is a general distrust of government in Wyoming, much like in New Hampshire, and I greatly question government’s ability to decide questions of life and death. People tell me that we know offenders are guilty because of DNA, but the system isn’t perfect. Humans and even scientists are fallible. Additionally, we have DNA in only about 10% of the cases.

Ray: In Utah we have appropriate safety nets. No death row inmate has ever attempted to appeal on innocence, so in some states the system is working.

Fields: I don’t want to see anyone go to jail for something they didn’t do. But it happens. For people of color we see over-incarceration all the time. We want to make sure we avoid it and address it. We need a fair and equitable process. And, of course, racism troubles me, because my color is the one thing I can’t divorce myself from, and right now we are living in a society where
people of color are being demonized. We have to work at a very high level to address this issue. We also need to work upstream from this dark side of punishment, helping kids read by third grade and develop problem-solving skills.

Cushing: In New Hampshire we had two capital murder cases that went on simultaneously a decade ago. One involved an African American male and the other involved a white millionaire. Both were convicted of capital murder, but when it came to sentencing the jury decided the white millionaire would get life without parole and the young African American would get the death sentence, making 100% of our death row population people of color. On the issue of wrongful conviction, I see Ray Krone in the back of the room. This is the face of wrongful conviction. Ray Krone spent years in jail and was sent to death row for a murder that he did not commit. It is inevitable that some people will be wrongfully condemned and put to death. If you are a family member of the person who is put to death wrongfully, you grieve as much as any of us do.

A Personal Perspective

At the end of the session, Ray Krone was the first member of the audience to ask a question of the panel. Krone spent two years on death row before he was acquitted with the assistance of the Innocence Project, a New York–based nonprofit legal organization, and DNA evidence. His experience, along with that of the panel, further highlighted the very personal nature of this issue. During his remarks, Krone observed that only 2% of counties are responsible for all the people on death row in the United States, a fact that shows, he said, the system works very differently across the country.

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Editor’s note: The panelists’ responses have been edited for length and clarity.