

Against the Tide: The Death Penalty in Alabama

This ACPD fact sheet was made possible by the members of Arise Citizens' Policy Project

Dec. 6, 2012

Editor's note: This fact sheet is a companion to "A Temporary Halt: Alabama's Executions," available online at arisecitizens.org. The earlier piece examines Alabama's long and tangled history with the death penalty and proposals to study and reform the state's capital justice system. What follows is a look at Alabama's death penalty through the lenses of governmental competence, transparency and fiscal responsibility.

Confidence or lack thereof in government action emerged as a dominant theme of the 2012 presidential election. According to the Pew Research Center's 2012 American Values Survey, eight in 10 Republicans now believe that "when something is run by the government, it is usually inefficient and wasteful," up from 65 percent who agreed with that statement in 1987.

In Alabama, the death penalty is a curious exception to this concern.

When it comes to executing people, a majority of Alabamians appear to trust the government to get it right every time. Government officials are involved at every phase of capital punishment: police investigating and making arrests, state forensics labs testing evidence, district attorneys conducting prosecutions, government-appointed defense attorneys representing low-income defendants, and elected judges overseeing trials and sentencing. For all of that government involvement, many Alabamians appear unconcerned about the prospects for errors in the process. Lack of transparency in our capital punishment system prompts little public comment. Similarly, on the fiscal side, calls for reducing Alabama's spending rarely include eliminating costly executions.

Risk of executing the innocent

Processes exist for handling wrongful incarceration cases, but a victim of wrongful execution is gone forever. The State of Texas may already have crossed the line. Considerable evidence suggests that two people executed in Texas in recent decades – Cameron Todd Willingham (2004) and Carlos DeLuna (1989) – did not commit the crimes for which they were put to death. In Alabama, since 1981, seven people have been removed from death row just prior to their executions.

Defendants accused of murder face a complex process, even before their trials begin. At each step

of the way, human error or even misconduct can occur. For many defenders of capital punishment, exonerations prove that "the system works." However, if loss of innocent life is seen as an unacceptable risk, the statistics expose a system that has thus far avoided calamity only by chance.

According to the Equal Justice Initiative, Alabama sentences more people to death per capita than any other state, in part because we are the only state that gives elected judges unlimited authority to override a jury's recommended sentence of life in prison without parole. Over the past decade, about 55 people per year have been executed in the United States. Alabama executed an average of 6 people per year in 2009-11.

When it comes to executing people, a majority of Alabamians appear to trust the government to get it right every time.

The debate over drugs

Even supporters of executions agree that they should be conducted in a humane

fashion. Unfortunately, Alabama keeps its execution practices shrouded in secrecy, away from the public's moral scrutiny. Alabama's executions are closed to the public, not broadcast or recorded, and are conducted by injecting a secret cocktail of deadly chemicals.

Lethal injections commonly involve a sequence of three drugs: an anesthetic, a muscle relaxant and, finally, a drug that stops the heart. The U.S. Supreme Court held in *Baze v. Rees* (2008) that lethal injections do not necessarily violate the Eighth Amendment's prohibition on cruel and unusual punishment, but they should avoid "unnecessary pain." Establishing and monitoring such a threshold remains difficult. And the Alabama Department of Corrections does not disclose the contents of lethal injections. The European Commission (the governing body of the European Union) has banned the export of drugs used for executions in the United States.

Of the eight barbiturates subject to European export controls, two – sodium thiopental and pentobarbital – were used until recently in all the states that perform lethal injections. The only American manufacturer of sodium thiopental ceased production of the drug in January 2011, creating concerns about a shortage of execution drugs. Further, a federal judge in March 2012 prohibited the use of imported execution drugs and ordered the Food and Drug Administration

to collect such drugs from any states that have imported them. However, Alabama and other death penalty states facing shortages of sodium thiopental and pentobarbital have continued executions by using other sedatives of unknown effectiveness.

The cost of killing

States around the nation are looking at ways to cut costs. Fiscal hawks in some states argue that one area for savings could be to reduce or eliminate capital prosecutions. Capital murder trials require expensive legal safeguards to ensure that constitutional liberties are protected, often making it cheaper to prosecute the case as a “regular” murder trial.

It costs \$43 per day to keep a defendant on death row, according to the Alabama Department of Corrections. Of the roughly 200 people currently awaiting execution in the state, the average prisoner has been there for almost 12 years. The cost of housing a prisoner in the general population is slightly lower.

Defenders of the death penalty point to the costs of keeping prisoners in jail for the rest of their lives.

Many also argue that constitutionally required procedures can drag out the timeline of executions, adding to the expenses of extended incarceration and taxpayer-funded legal defenses against appeals. However, creating an “express lane” for death, shortening due process in order to save money, is morally questionable and constitutionally impermissible. Appeals are the essential mechanism we have to ensure against wrongful execution.

States, including Alabama, typically do not keep track of the amount of money spent on individual inmates from the time they are sentenced to death until an execution takes place. “All states need to take a serious look at how much they are spending on death penalty cases and decide if it is money well spent,” says Richard Deiter, executive director of the Death Penalty Information Center (DPIC). According to the DPIC, it can cost a state more than \$30 million to carry out a single execution. As state budgets continue to shrink, policymakers immune to the moral argument against capital punishment may be persuaded by the fiscal burden of executions.

Against the tide

In 2004, New York’s highest court ruled the state’s death penalty to be unconstitutional. In December 2007, New Jersey became the first state in the modern era of executions to repeal the death penalty legislatively. The New Jersey prohibition stemmed

from the recommendation of a commission appointed by the state legislature. Since then, New Mexico (2009) and Illinois (2011) have abolished their death penalty systems, with Connecticut (2012) becoming the latest state to ban executions. A California proposal to replace the death penalty with life without parole failed in 2012 by a vote of 53 percent to 47 percent. The vote suggests a strong shift since 1978, when more than 70 percent of Californians supported reinstatement of the death penalty.

Such states are falling in line with a marked trend against the death penalty around the world. The United States is one of only about 40 nations in the world (out of nearly 200) continuing to practice capital punishment. Of those that do execute their citizens, most are nations notorious for human rights abuses, such as China, North Korea, Iran, Syria and Saudi Arabia. According to Hands Off Cain, an Italian group monitoring global executions, the U.S. is one of only seven “liberal democracies” retaining the death penalty. (The others are Botswana, India, Indonesia, Japan, St. Kitts and Nevis, and Taiwan).

Considering these global human rights concerns, Alabama’s determined use of the death penalty would seem to fly in the face of the state’s ongoing push for internationalization in economic development. Still, our record of executions has not yet proven to be an obstacle in recruiting industries from nations that abhor the practice.

Conclusion

Pushing for even a temporary halt to executions in Alabama has proven difficult. If Alabama legislators are going to follow other states and impose a death penalty moratorium, they will have to be persuaded by solid policy principles as well as moral concerns. The economic impact of capital punishment must converge with statistical evidence and transparency concerns to create momentum toward a serious evaluation, if not abolition.

Thirty-three states retain the use of the death penalty, and Alabama is likely to be one of the last to give up the practice. Popular faith in the system shows little prospect of yielding to the broader distrust of government. Still, whether legal or economic forces hold sway, the strong international trend suggests that our days of state-sanctioned killing are numbered.

This fact sheet was prepared by policy analyst Stephen Stetson. It may be reproduced with acknowledgment of Arise Citizens’ Policy Project, Box 1188, Montgomery, AL 36101; (800) 832-9060; www.arisecitizens.org.