

## DEATH PENALTY

# Setting new standards for DNA, defense

## Exonerations prompt call for changes

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WASHINGTON BUREAU

WASHINGTON • Fear that innocent people could be put to death is eroding public support for the death penalty and prompting legislators and others around the country to argue for changes in the way capital punishment is administered.

The fears are not unfounded, either. Cases of prisoners being released from Death Row because of newly available techniques to analyze DNA have sparked concern and action.

In Illinois, after 13 Death Row inmates were exonerated by DNA or other evidence, Republican Gov. George Ryan placed a moratorium on executions two years ago, saying that number was too high. Maryland's Democratic governor also has called a moratorium while the state studies whether the death penalty is imposed more often on minorities.

And while polls show most people still support the death penalty, their numbers are not as high as they have been. Questions about the way it is being administered have even brought Congress into an issue normally left up to each state.

"It's no better for society to kill an innocent person than for a citizen to kill another citizen," said Rep. Mark Foley, R-West Palm Beach, a death penalty supporter and one of dozens of co-sponsors of legislation in Congress to improve how capital cases are tried and appealed.

The bill, the Innocence Protection Act, would give Death Row inmates across the country better access to DNA evidence and reform the way defense lawyers are chosen in capital cases. The Senate version passed the Judiciary Committee by a 12-7 vote recently, and supporters hope both houses will pass the bill this year.

Rep. William Delahunt, D-Mass., one of the lead sponsors of the House version, said Congress simply wants to create minimum standards for maintaining DNA evidence and for choosing defense lawyers across the country. The rules and laws are too different across the country, he said.

A former prosecutor and death penalty opponent, Delahunt argues that his bill is more about the justice system as a whole than it is about the death penalty in particular. If people are being wrongfully convicted and placed on Death Row, the justice system suffers, he said.

"You have to have as best as humanly possible a justice system that has the confi-

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# New bill for death penalty reform targets DNA, lawyers

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dence of the people," Delahunt said.

Nationwide, 102 inmates have been released from Death Row for various reasons since the death penalty was reinstated in 1976. Last month, a man was acquitted of murder in a retrial in Kentucky after the state Supreme Court threw out his earlier conviction. The man was a juvenile when he was sentenced to death for the double murder of an elderly couple.

In the past two years, two Broward County men on Florida's Death Row have been cleared because of DNA evidence. One of them, Frank Lee Smith, died of cancer in prison before he was cleared. The other, Jerry Frank Townsend, spent almost 22 years in prison for crimes he didn't commit before being released in June, 2001. Overall, 22 people have been taken off Death Row in Florida since 1976.

In that time, 782 people have been executed across the country, 51 of them in Florida. Only Texas, Virginia and Missouri have executed more people than Florida. Nationally, more than 3,700 inmates have been sentenced to death and are awaiting execution, including 372 in Florida.

"It's just a continuing problem that people who are either innocent or otherwise not subject to the death penalty are getting death sentences in this country," said William Matthewman, a South Florida defense attorney who has tried numerous capital cases.

Defense attorneys and advocates for Death Row inmates say lawyer competency is the biggest issue that needs to be addressed nationally. Defense attorneys in capital cases are often inexperienced and lack the resources necessary for such a complicated trial. The pay can be poor, often failing to attract the best and the brightest.

Poor representation has been the problem in some wrongful or questionable convictions, advocates say. In one Alabama case, according to the Justice Project, a group lobbying for the Innocence Protection Act, a woman's attorney was drunk in court, held in contempt and sent to jail. Upon his release the next day, the attorney continued representing the woman. She was convicted and sentenced to death.

In another case, this one in Georgia, the defense attorney was paid less than \$20 an hour. He had never tried a capital case. His client, Gary Nelson, was convicted and spent 11 years on Death Row before he was cleared of all charges on appeal.

"It's the brain surgery of criminal law and you simply can't have confidence in a system where the lawyers don't have the expertise or resources," said Nancy Daniels, president of the Florida Public Defenders Association and the public defender for the 2nd circuit in Tallahassee.

Polls still show strong support for the death penalty, with about two-thirds of Americans backing the ultimate punishment for people convicted of murder. But that number is down from almost 90 percent in the 1980s. And when people are asked whether they prefer a death sentence or life in prison without parole, only about half choose the death penalty.

"The strength of support for the death penalty in the abstract remains high, but people are realizing the system is not working," said Peter Loge, director of the Campaign for Criminal Justice Reform at the Justice Project, a group lobbying for the Innocence Protection Act.

Separate versions of the Innocence Protection Act are making their way through the House and Senate. Both would give incentives to states to preserve DNA evidence and allow inmates access to it. The Senate version would allow states to create their own defense attorney programs or would offer federal money to nonprofit defense groups. The House version would establish a national commission to create minimum standards for capital defense lawyers. It would initially provide \$50 million to help states implement the standards and penalize states that do not.

Florida already has minimum standards for capital defense attorneys, including certain levels of experience and continuing education in defending capital cases. In Broward and Palm Beach counties, lead capital defense attorneys can charge up to \$100 an hour, with Broward capping the maximum at \$35,000. These attorneys are chosen when the public defender's office is unable to represent someone accused of a capital crime.

The bill's other component, the maintenance of DNA evidence, is mostly meant for cases where defendants have already been convicted. Today, DNA analysis is readily available to law enforcement and defense attorneys. But for those who were convicted before DNA analysis became widespread, the preservation of such material is key. So is access.

But procedures for preserving DNA evidence, and letting inmates have access to it vary across the country.

"Once someone's executed, that's it," said Matthewman. "It doesn't matter if the person is found to be innocent or not. It's irreversible."

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