

OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

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TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 95

Good afternoon, Mr. Chairman. Thank you for the opportunity to testify today in support of Senate Bill 95 to replace the death penalty in Colorado for crimes committed on or after July 1, 2017.

I am the elected District Attorney for Colorado's 20th Judicial District. My jurisdiction is a rural and urban mix of 320,000 people and is the 6th largest prosecutor's office in Colorado. I manage a budget of around \$6 million and a staff of 80, including 32 sworn prosecutors. Together, we prosecute nearly 2400 felonies each year, as well as several thousand misdemeanors and serious traffic cases. We have obtained guilty verdicts or convictions on 35 homicides (14 of which were first degree murders) in the 8 years since I took office in January of 2009.

I am here today to testify in favor of Senate Bill 95 to replace the death penalty in Colorado with mandatory life without parole. I approach this issue as a person with the responsibility to manage and run a prosecutor's office. I am a pragmatic person and my position on the death penalty is pragmatic; my view is that, for three basic reasons, the death penalty is not a practical tool for law enforcement in Colorado.

First there is the expense, which is several million dollars at least (more than the entire annual operating budget for my office), for any case in which the death penalty is sought, all of which must be funded by state and local governments. With tight budgets and concerns about funding for education, strong police forces, and quality victims' service this is not a practical use of funds, when the alternative, life in prison, is a just punishment for far less money.

The next is the amount of time involved in a death penalty case. Every murder case that has occurred within my tenure has been taken to verdict and sentence within 18 months of when the case was filed. Every prosecutor knows that prompt resolution is in the interest of the family of the victim, especially in a case involving a violent death. One of the major problems with the death penalty is that it takes years to resolve the case, years which can take an extreme emotional toll on the grieving families of the victim by failing to provide closure. Our state's last two death penalty trials, the Aurora theater shooting and the Ferro's Bar trial were delayed by months of complex motions practice and did not even begin until almost three years after the crimes took place. It is also worth noting that because of the time involved, a death penalty defendant develops a certain amount of "macabre celebrity" whereas most murder defendants are quickly forgotten after a conviction.

The final concern I have is the randomness of the death penalty. Because it is sought in only a tiny fraction of cases, it is by definition random. Nothing illustrates this like the fact that all of the men on Colorado's death row are from the same county and went to the same high school. The death penalty is sought based on prosecutorial discretion. Prosecutors choose if and when to seek the death penalty, there is no set standard. The only law is that the murder has to meet one of 12 aggravating factors, which means almost every murder in this state qualifies. So what goes into making the choice to seek death is largely arbitrary based on who the prosecutor is.

Those are the practical problems with the death penalty that lead me to support Senate Bill 95.

This is not the first time that I have come out publicly against the death penalty. I have made my opinion known and have received feedback from other elected District Attorneys and know the arguments they make in support of having the death penalty. These are my colleagues whom I respect and agree with on many issues and their views are honorable. However, I disagree with their conclusions on the repeal of the death penalty.

Let me tell you why.

The arguments in favor of the death penalty are essentially three fold. First, there is the argument that "these are very bad people." The fundamental problem with this argument is that it is beside the point. As District Attorneys, we deal with many, many very bad people, many of whom have done unspeakable things to other human beings. The question is not whether these people are bad, or even if they are hypothetically deserving of execution. The question is whether a system can be devised to execute only those truly deserving of death; a system that is fair, efficient, consistent, not influenced by race or other improper factors and that doesn't create undue collateral problems or pragmatic nightmares. Our history has shown that such a perfect system is not possible and that endlessly modifying a system devised by human beings to try to make it absolutely flawless is fruitless.

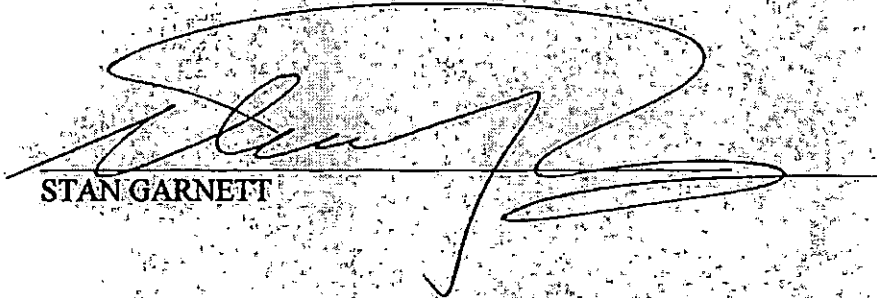
As Justice Blackmun said in his famous 1994 dissent, trying to get the procedure for the death penalty exactly right is nothing more than "tinkering with the machinery of death" and, I suggest, is a hopeless exercise and unseemly for a civilized society.

The second argument I've heard in favor of the death penalty from elected prosecutors, and one that I'm sure you will hear this afternoon, is that the death penalty is justified from the point of view of what they call "societal self-defense." This is an argument that concedes that very, very few defendants are truly worthy of the death penalty, but maintains that there are a certain number of defendants who commit terrorist acts and other very serious murders whom society must be able to execute to be able to protect itself. The fundamental problem with such an argument is that there is no credible evidence that the existence of the death penalty is a deterrent to specific acts of violence. Because modern prisons are very secure and virtually escape proof, the idea that certain very bad people need to be killed to be able to protect society is, I believe, facetious; trying to devise a statute that would do so is, again, pointless "tinkering with death." This legislature has better things to do.

And the final argument I've heard, and I anticipate you will hear from elected prosecutors this afternoon, is that having the death penalty on the books is necessary to assure that pleas of guilty

to first degree murder with life without parole sentences can be obtained on tough cases. This justification surprises me because there are many practical and ethical problems with this position. Every prosecutor agrees that it is an inappropriate use of the death penalty to threaten it to coerce a guilty plea; doing so is both unethical and immoral.

In closing, I will say that Colorado has a fair and effective justice system. However, the death penalty is not a practical or important part of it and it should be repealed; which is why I support Senate Bill 95. Thank you again and I am pleased to answer any questions.



STAN GARNETT