

House Joint Resolution H Death Penalty

My name is _____, I represent the Michigan Advocates for Responsible Governing (MIARG). I am here in support of House Joint Resolution (HJR) H, which would reinstate the death penalty (also known as capital punishment) in Michigan for first-degree murder. This would include the following crimes:

1. Premeditated murder (lying in wait, deliberate killing)
2. Felony murder (murder committed while conducting an evil, criminal act)
3. Murder of an on-duty peace officer (law-enforcement officer) who is lawfully engaging in their duties.

In 1846, Michigan was the first English-speaking government to abolish the death penalty for murder. To date, most US States have not followed suit.

Of the 30 US States that allow capital punishment, only 25 executions were carried out in 2018. The US Supreme Court rulings over the past few decades have narrowed the application and have abolished the death penalty for intellectually disabled offenders, juvenile offenders and prohibits executing individuals who suffer from mental illness *subsequent* to a sentence of death. As we all know, the states must comply with federal rulings and in recent years, several states have had to update their laws accordingly.

In recent times, we have seen places of worship become a target for mass shootings. I lead worship at a local church, Capital City Vineyard in East Lansing. If someone were to enter with a weapon and begin shooting - I would do everything in my power to eliminate that threat. I believe, and I hope, that you would do the same. If you had access to a firearm, you would attempt to stop them in their tracks.

Many of us would not think twice about that form of action being the right thing to do. Of course, on the front end, you would be saving innocent lives from being taken moments later — it is your moral obligation. But also you would be administering justice. How does “justice” shift to “life in prison” if a murderer has been apprehended rather than eliminated?

Many law-enforcement officers face intense scrutiny after acting in self-defense. This should be the case; however, lawbreakers do not deserve the law to benefit their lifestyle. Laws that egregiously restrict the proper use of technology and medical advancements (and so on) make things more difficult for law-abiding citizens — for the purpose of eliminating the possibility of compromised data. For example: San Francisco just passed a ban on the use **by police** of face recognition technology. Such technology should not be suppressed to the point of becoming a non-viable option when fighting crime.

Similarly, Michigan abolished the death penalty causing more murderers to occupy our prisons and more taxpayer dollars to be spent in the process. No one wishes it were so, but technologies such as the electric chair do have their place. Lethal injections also have a right and a wrong use.

If you're in the armed forces, you have the duty and moral obligation to protect your country. And any good American citizen should be willing to do the same for their family and community, being prepared to act in self-defense if the worst should happen.

If an individual is plotting a crime which involves the killing of innocent lives, Michigan, being one of 20 states that forbid the death penalty, does not discourage such criminals.

"Speak softly and carry a big stick" - 26th US President, Theodore Roosevelt. Meaning, be kind to everyone but be prepared to bring justice to any situation -- prepared to back up your word with action.

It is not about vengeance. It is about justice and judgement that fits the crime.

In closing, I'd like to echo the statement of New Hampshire Governor Chris Sununu (R) in opposing a repeal of the death penalty in his state, may we "stand with crime victims, members of the law enforcement community and advocates for justice ..." and New Hampshire Senator Sharon Carson (R), "We're not talking about getting revenge ... This is about justice, nothing more, nothing less."

DEATH PENALTY ON TRIAL

Executions are down, while state attention to capital punishment is up.

BY AMBER WIDGERY

New death sentences and executions remain at near historic lows. Nationwide, 25 executions were carried out in 2018, compared with 98 in 1999.

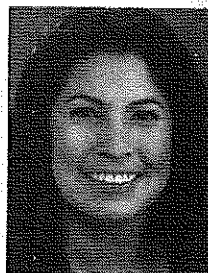
There are myriad reasons for the decline in numbers in recent years, but lengthy litigation of appeals and difficulties carrying out executions certainly have had an impact and have drawn the attention of policymakers. Last-minute stays of execution from the courts and an inability to legally obtain the drugs necessary for lethal injections have caused delays. And, in some states, concerns about the entire process, from investigation through execution, have resulted in gubernatorial moratoriums on all executions, the most recent being in California.

These complications have also forced states to change their laws and protocols and have led several states to move away from executions altogether.

Last year Washington became the 20th state to overturn or abolish capital punishment when the state supreme court found the death penalty “invalid because it is imposed in an arbitrary and racially biased manner,” Chief Justice Mary Fairhurst wrote for the court.

The court left the door open for the Legislature to “enact a ‘carefully drafted statute’ to impose capital punishment.” Instead, Washington Attorney General Bob Ferguson (D) requested that Senator

Reuven Carlyle (D) introduce legislation to remove the statute from the books entirely, a measure Governor Jay Inslee (D) promised to sign.



Stonier

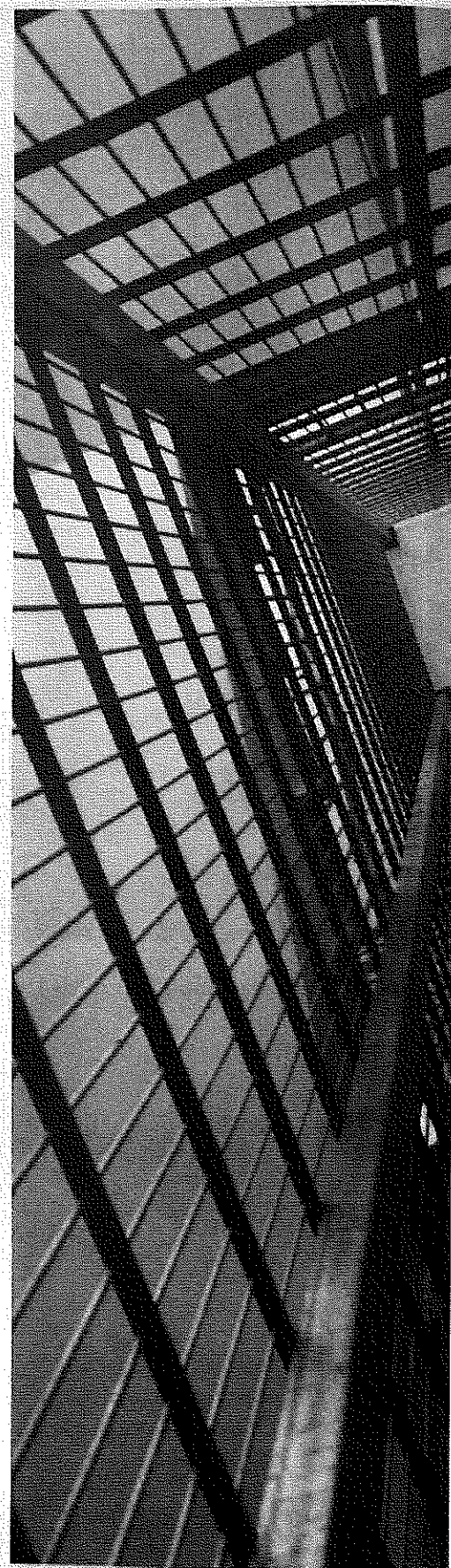
The bill was voted out of the Senate but later stalled in the House. Majority Floor Leader Monica Stonier (D) said that leadership prioritized other measures, including changing life

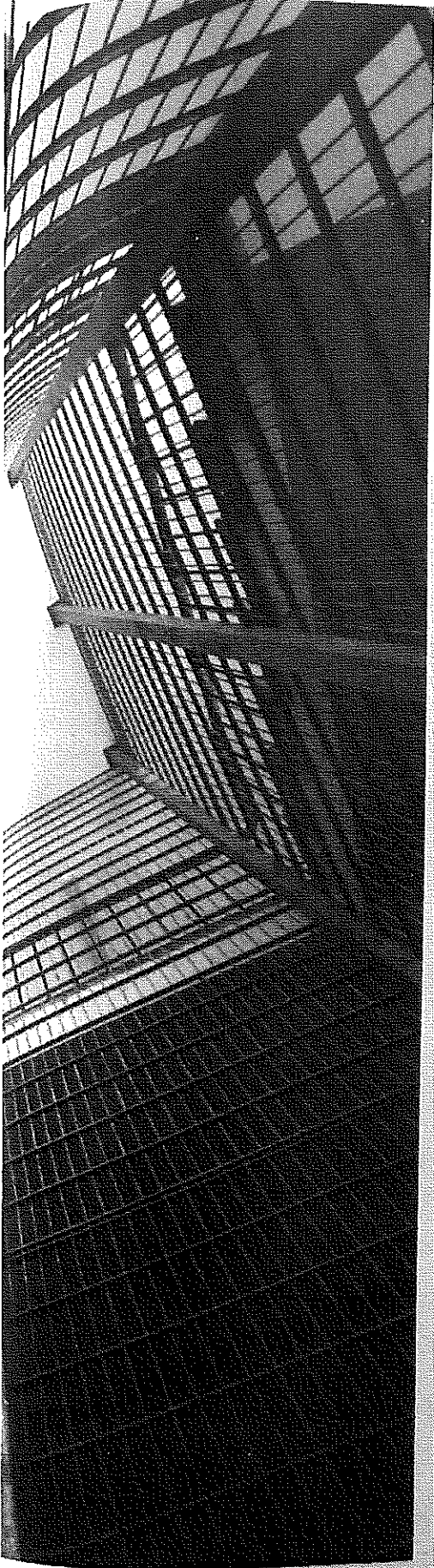
sentences and three-strikes laws to “have an impact immediately in the next year on people’s lives.” There was no risk in holding off until next year, she said, since capital punishment is currently illegal.

A Narrowing Field

Several U.S. Supreme Court rulings over the past two decades have narrowed the death penalty’s application in the states. Based on the Eighth Amendment’s ban on cruel and unusual punishment, the high court abolished the death penalty for intellectually disabled offenders in 2002, for juvenile offenders in 2005 and, in 2008, for raping a child when death is not the intended or actual result.

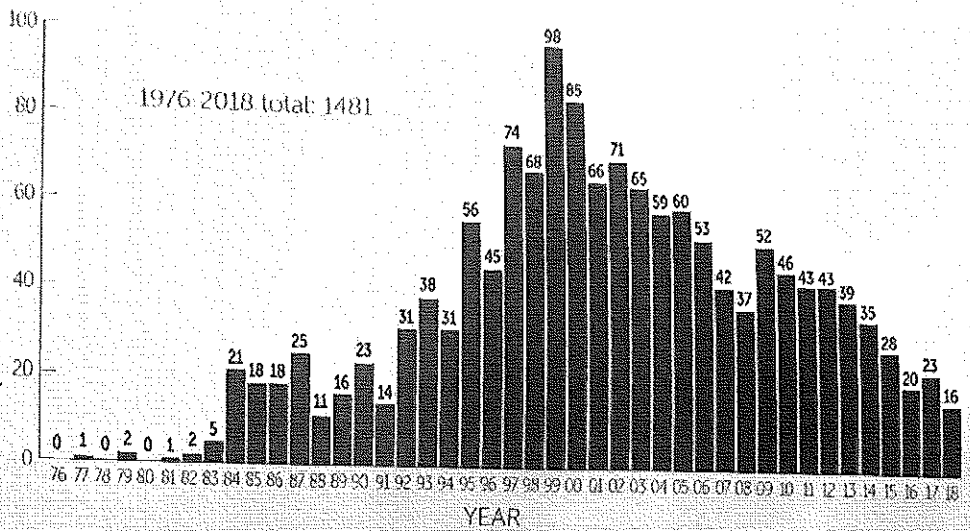
The cases regarding intellectual disabilities have possibly had the most significant impact in the states. The 2002 *Atkins v. Virginia* decision prohibited the execution of “mentally retarded” defendants but





Going Down

The number of executions performed annually has dropped dramatically since 1999.



Source: Death Penalty Information Center, August 2018

left it to the state to determine who that includes. Since that decision, the court has struck down definitions adopted in Florida and Texas.

The court issued a second opinion in the *Moore v. Texas* case this year, taking the rare step of applying the legal standard for intellectual disability itself, instead of the more typical course of ruling on whether a lower court has correctly applied a standard.

In the first *Moore* case, the court observed that at age 13, “Moore lacked basic understanding of the days of the week, the months of the year and the seasons; he could scarcely tell time or comprehend the standards of measure or the basic principle that subtraction is the reverse of addition.”

The court held that, among other errors, the Texas Court of Criminal Appeals relied on factors that “had no grounding in prevailing medical practice,” using lay perceptions and stereotypes of intellectual disability to evaluate the accused. The second opinion concluded that the lower court had made many of the same errors as it had in its first review and found that Moore was in fact intellectually disabled.

It’s interesting to note that the Texas district attorney’s office agreed. Harris

County District Attorney Kim Ogg (D) declined to defend the case in front of the Supreme Court and even filed a brief in opposition, stating that the crime was “brutal” and that the punishment should be “lengthy and constitutional.”

The Supreme Court also prohibited executing individuals who suffer from mental illness subsequent to a sentence of death, holding in 1986 that the Eighth Amendment prohibits the execution of a person who has “lost his sanity” after sentencing. The standard was further defined in 2007, in a case that focused on whether a prisoner can “reach a rational understanding” of why he’s being executed.

Earlier this year, in a case from Alabama, the court affirmed a 2007 ruling that, although the Eighth Amendment does not bar executing criminals who can’t remember their crimes, it does prohibit executing people with dementia who are unable to rationally understand the reasons for their sentence. In that case, the offender had a series of strokes resulting in dementia. The issue of how to define “rational understanding” was sent back to the Alabama court to determine.

Several states have had to update their laws to comply with the *Atkins* decision, and the cases from Florida and Texas have

also certainly affected the states. Florida was forced to change its procedures for determining intellectual disability, and North Carolina had to change the narrow language of its statute.

The Texas Legislature is currently considering bills that would change the procedure for determining intellectual disability in response to *Moore*.

State courts also have had a say on which procedures are constitutional for determining competency. After the Arkansas supreme court ruled that allowing the corrections director to determine a condemned inmate's competency was unconstitutional this year, the General Assembly passed a law requiring that inmates get an evidentiary hearing.

Some states considered going further. Proposed legislation in Arizona, Arkansas, Kentucky, Mississippi, Missouri, North Carolina, Ohio, South Dakota, Tennessee, Texas and Virginia would go beyond current constitutional standards and exclude those with serious mental illness at the time of the crime from execution.

Executions in Limbo

Some states have capital punishment on the books but have been unable to move cases forward. Governors have placed moratoriums on executions in California, Colorado, Oregon and Pennsylvania. Elsewhere, court orders have halted executions. And a few states are under de facto moratoriums because they haven't been able to obtain lethal injection drugs.

California Governor Gavin Newsom (D) is the most recent to impose a moratorium. His March executive order granted reprieves to 737 death row inmates and suspended executions for as long as he is in office. The order also repealed the state's lethal injection protocol and closed the state's execution chamber, which hadn't been used since 2006.

Alternatively, other states have tried to get executions back on track by enacting confidentiality laws that keep various aspects of executions, including sources of drugs and identities of participants a secret. Eighteen states have confidentiality

Expanding Confidentiality

Confidentiality laws keep certain aspects of executions, including sources of drugs and identities of participants, a secret. The 18 states shown below have enacted a confidentiality provision.

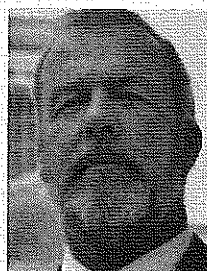
State	Year of most recent enactment
Arizona	2010
Arkansas	2019
Florida	2000
Georgia	2013
Indiana	2017
Louisiana	2012
Mississippi	2016
Missouri	2007
Nebraska	2009

State	Year of most recent enactment
North Carolina	2015
Ohio	2015
Oklahoma	2011
South Carolina	2010
South Dakota	2013
Tennessee	2013
Texas	2015
Virginia	2016
Wyoming	2015

Source: NCSL, May 2019



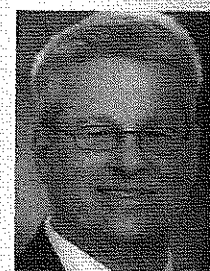
Olsen



Cushing



Carson



Farnsworth

provisions, most of which were enacted in the last decade.

Arkansas is the latest state to expand confidentiality. Legislative findings associated with the new enactment state that, "There is a well-documented guerilla war being waged against the death penalty." The state's existing law was expanded to broadly protect "documents, records or information that could lead to the identification of a person or entity" involved in providing lethal drugs.

Modify or Repeal?

Concerns about the death penalty extend beyond Washington and California. Lawmakers in 18 other states where capital punishment is currently legal intro-

duced bills this year to abolish it. That number is not unusually high, but some of the proposals have gotten a surprising amount of traction.

A bipartisan bill ultimately failed in the Wyoming Senate, but not before it was approved 36-21 by the House. Representative Jared Olsen (R), the sponsor, said the bill was supported by a coalition of "social conservatives and libertarians" in addition to some "heavy hitters," including three-quarters of the House leadership.

The New Hampshire legislature has considered repealing the death penalty annually for the last two decades. Representative Renny Cushing (D), founder of Murder Victims' Families for Human Rights, a group opposed to the death pen-

ality, has sponsored the legislation every year since 1998. This year, for at least the third time in the last two decades, the bill has made it to the governor's desk only to be vetoed.

Governor Chris Sununu (R) voiced his opposition to the bill in a written statement in early April, saying he "continues to stand with crime victims, members of the law enforcement community and advocates for justice in opposing a repeal of the death penalty."

New Hampshire Senator Sharon Carson (R) echoed the governor's remarks. "We're not talking about getting revenge or soothing the families' soul or anything else like that," she said. "This is about justice, nothing more, nothing less."

Sununu signed the veto in early May in a building named for the victim of the

state's only death row inmate, surrounded by law enforcement and members of the victim's family. He expressed his hope that lawmakers would reconsider their positions on the issue, but bill sponsor Cushing and Senate President Donna M. Soucy (D) both thought an override vote would likely be successful.

Cushing said his colleagues in the legislature had given his bill a lot of thought. "I think this is not a policy that's susceptible to political winds of the day," he said. "People made an examination of their conscience ... and I think that conscience will continue to hold."

In Arizona, instead of a repeal, Senate President Pro Tem Eddie Farnsworth (R) sponsored successful legislation to eliminate three of the aggravating factors that could make a murder eligible for capital

punishment. The Maricopa County Attorney's Office supported the move, he said.

"The courts have expressed concerns about constitutionality for all aggravators that exist in death penalty sentencing."

Debate Continues

Taking a different tack, lawmakers in eight states, following a legislative repeal or court action, have introduced measures to reinstate capital punishment.

Strongly held views and opinions on the cost effectiveness, efficacy, morality and fairness of this final form of punishment are sure to persist, perhaps longer than the death penalty itself.

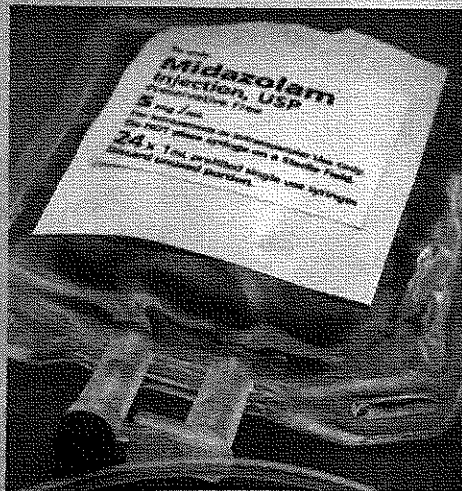
Amber Widgery is a senior policy specialist in NCSL's Criminal Justice Program.

Debating New Execution Methods

Lethal injection is the primary method of execution in all states with the death penalty. But ever since pharmaceutical companies started withholding the drugs used in executions, lawmakers have been forced to look at alternatives. Most companies, for various reasons, don't want to be known for contributing to, or supporting, capital punishment.

So lawmakers are bringing back historical methods of execution and creating new lethal-injection mixtures with previously unused drugs, like fentanyl and midazolam. They've specified that alternative methods be used only if lethal injection is unavailable or has been ruled unconstitutional.

In 2015, Oklahoma became the first state to legalize executions by nitrogen hypoxia (asphyxiation). If it and traditional lethal drugs are unavailable, officials may turn to electrocution or the firing squad, which lawmakers legalized as last resorts. Mississippi did the same in 2017 and Alabama in 2018, though lawmakers there elected to let offenders choose nitrogen hypoxia over lethal injection even when



the latter is available.

Death by nitrogen hypoxia is said to be painless and simple to administer. It hasn't been tested on humans, however, so there's little data on its effectiveness.

Instead of designating backup methods, some states are creating new drug formulas. Nebraska created a new formula using the synthetic opioid fentanyl and became the first state, in August 2018, to use it in an execution. Fentanyl has become notorious for its lethality, driving up overdose

deaths in the opioid epidemic. But, like nitrogen hypoxia, it has been used so seldomly in executions that questions linger.

Nevada was set to carry out the first execution using fentanyl, but a court order halted the proceedings based on the drug's unknown effects. The state had turned to fentanyl after the pharmaceutical company Alvogen blocked its use of the company's sedative midazolam.

The effectiveness of midazolam, which is intended to make the offender unconscious, was questioned after it apparently did not work during an August 2018 execution in Tennessee. The other drugs used in the lethal mixture allegedly cause pain similar to being burned alive or drowned.

Thirty-three death row inmates joined a lawsuit arguing that Tennessee's lethal mixture violates their Eighth Amendment right to be free from cruel and unusual punishment.

As more states turn to midazolam and fentanyl, more constitutional challenges are likely to follow.

—*Caitlin Davis*