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States With No Death Penalty Share Lower Homicide Rates

The dozen states that have chosen not to enact the death penalty since the Supreme Court ruled in 1976 that it was constitutionally permissible have not had higher homicide rates than states with the death penalty, government statistics and a new survey by The New York Times show.

Indeed, 10 of the 12 states without capital punishment have homicide rates below the national average, Federal Bureau of Investigation data shows, while half the states with the death penalty have homicide rates above the national average. In a state-by-state analysis, The Times found that during the last 20 years, the homicide rate in states with the death penalty has been 48 percent to 101 percent higher than in states without the death penalty.

The study by The Times also found that homicide rates had risen and fallen along roughly symmetrical paths in the states with and without the death penalty, suggesting to many experts that the threat of the death penalty rarely deters criminals.

"It is difficult to make the case for any deterrent effect from these numbers," said Steven Messner, a criminologist at the State University of New York at Albany, who reviewed the analysis by The Times. "Whatever the factors are that affect change in homicide rates, they don't seem to operate differently based on the presence or absence of the death penalty in a state."

That is one of the arguments most frequently made against capital punishment in states without the death penalty — that and the assertion that it is difficult to mete out fairly. Opponents also maintain that it is too expensive to prosecute and that life without parole is a more efficient form of punishment.

Prosecutors and officials in states that have the death penalty are as passionate about the issue as their counterparts in states that do not have capital punishment. While they recognize that it is difficult to make the case for deterrence, they contend that there are powerful reasons to carry out executions.

Rehabilitation is ineffective, they argue, and capital punishment is often the only penalty that matches the horrific nature of some crimes. Furthermore, they say, society has a right to retribution and the finality of an execution can bring closure for victims' families.

Polls show that these views are shared by a large number of Americans. And, certainly, most states have death penalty statutes. Twelve states have chosen otherwise, but their experiences have been largely overlooked in recent discussions about capital punishment.

"I think Michigan made a wise decision 150 years ago," said the state's governor, John Engler, a Republican. Michigan abolished the death penalty in 1846 and has resisted attempts to reinstate it. "We're pretty proud of the fact that we don't have the death penalty," Governor Engler said, adding that he opposed the death penalty on moral and pragmatic grounds.

Governor Engler said he was not swayed by polls that showed 60 percent of Michigan residents favored the death penalty. He said 100 percent would like not to pay taxes.

In addition to Michigan, and its Midwestern neighbors Iowa, Minnesota, North Dakota and Wisconsin, the states without the death penalty are Alaska, Hawaii, West Virginia, Rhode Island, Vermont, Maine and

Massachusetts, where an effort to reinstate it was defeated last year.

No single factor explains why these states have chosen not to impose capital punishment. Culture and religion play a role, as well as political vagaries in each state. In West Virginia, for instance, the state's largest newspaper, *The Charleston Gazette*, supported a drive to abolish the death penalty there in 1965. Repeated efforts to reinstate the death penalty have been rebuffed by the legislature.

The arguments for and against the death penalty have not changed much. At Michigan's constitutional convention in 1961, the delegates heard arguments that the death penalty was not a deterrent, that those executed were usually the poor and disadvantaged, and that innocent people had been sentenced to death.

"The same arguments are being made today," said Eugene G. Wanger, who had introduced the language to enshrine a ban on capital punishment in Michigan's constitution at that convention. The delegates overwhelmingly adopted the ban, 141 to 3. Mr. Wanger said two-thirds of the delegates were Republicans, like himself, and most were conservative. Last year, a former state police officer introduced legislation to reinstate the death penalty. He did not even get the support of the state police association, and the legislation died.

In Minnesota, which abolished capital punishment in 1911, 60 percent of the residents support the death penalty, said Susan Gaertner, a career prosecutor in St. Paul and the elected county attorney there since 1994. But public sentiment had not translated into legislative action, Ms. Gaertner said. "The public policy makers in Minnesota think the death penalty is not efficient, it is not a deterrent, it is a divisive form of punishment that we simply don't need," she said.

In Honolulu, the prosecuting attorney, Peter Carlisle, said he had changed his views about capital punishment, becoming an opponent, after looking at the crime statistics and finding a correlation between declines in general crimes and in the homicide rates. "When the smaller crimes go down — the quality of life crimes — then the murder rate goes down," Mr. Carlisle said.

Therefore, he said, it was preferable to spend the resources available to him prosecuting these general crimes. Prosecuting a capital case is "extremely expensive," he said.

By the very nature of the gravity of the case, defense lawyers and prosecutors spend far more time on a capital case than a noncapital one. It takes longer to pick a jury, longer for the state to present its case and longer for the defense to put on its witnesses. There are also considerably greater expenses for expert witnesses, including psychologists and, these days, DNA experts. Then come the defendant's appeals, which can be considerable, but are not the biggest cost of the case, prosecutors say.

Mr. Carlisle said his views on the death penalty had not been affected by the case of Bryan K. Uyesugi, a Xerox copy machine repairman who gunned down seven co-workers last November in the worst mass murder in Hawaii's history. Mr. Uyesugi was convicted in June and is serving life without chance of parole.

Mr. Carlisle has doubts about whether the death penalty is a deterrent. "We haven't had the death penalty, but we have one of the lowest murder rates in the country," he said. The F.B.I.'s statistics for 1998, the last year for which the data is available, showed Hawaii's homicide rate was the fifth-lowest.

The homicide rate in North Dakota, which does not have the death penalty, was lower than the homicide rate in South Dakota, which does have it, according to F.B.I. statistics for 1998. Massachusetts, which abolished capital punishment in 1984, has a lower rate than Connecticut, which has six people on death row; the homicide rate in West Virginia is 30 percent below that of Virginia, which has one of the highest execution rates in the country.

Other factors affect homicide rates, of course, including unemployment and demographics, as well as the amount of money spent on police, prosecutors and prisons.

But the analysis by The Times found that the demographic profile of states with the death penalty is not far different from that of states without it. The poverty rate in states with the death penalty, as a whole, was 13.4 percent in 1990, compared with 11.4 percent in states without the death penalty.

Mr. Carlisle's predecessor in Honolulu, Keith M. Kaneshiro, agrees with him about deterrence. "I don't think there's a proven study that says it's a deterrent," Mr. Kaneshiro said. Still, he said, he believed that execution was warranted for some crimes, like a contract killing or the slaying of a police officer. Twice while he was prosecuting attorney, Mr. Kaneshiro got a legislator to introduce a limited death penalty bill, but, he said, they went nowhere.

In general, Mr. Kaneshiro said, Hawaiians fear that the death penalty would be given disproportionately to racial minorities and the poor.

In Milwaukee, the district attorney for the last 32 years, E. Michael McCann, shares the view that the death penalty is applied unfairly to minorities. "It is rare that a wealthy white man gets executed, if it happens at all," Mr. McCann said.

Those who "have labored long in the criminal justice system know, supported by a variety of studies and extensive personal experience, that blacks get the harsher hand in criminal justice and particularly in capital punishment cases," Mr. McCann wrote in "Opposing Capital Punishment: A Prosecutor's Perspective," published in the *Marquette Law Review* in 1996. Forty-three percent of the people on death row across the country are African-Americans, according to the NAACP Legal Defense and Educational Fund.

The death penalty also has been employed much more often when the victim was white — 82 percent of the victims of death row inmates were white, while only 50 percent of all homicide victims were white.

Supporters of capital punishment who say that executions are justified by the heinous nature of some crimes often cite the case of Jeffrey L. Dahmer, the serial killer who murdered and dismembered at least 17 boys and men, and ate flesh from at least one of his victims.

Mr. McCann prosecuted Mr. Dahmer, but the case did not dissuade him from his convictions on the death penalty. "To participate in the killing of another human being, it diminishes the respect for life. Period," Mr. McCann said. He added, "Although I am a district attorney, I have a gut suspicion of the state wielding the power of the death over anybody."

In Detroit, John O'Hair, the district attorney, similarly ponders the role of the state when looking at the death penalty.

Borrowing from Justice Louis E. Brandeis, Mr. O'Hair said: "Government is a teacher, for good or for bad, but government should set the example. I do not believe that government engaging in violence or retribution is the right example. You don't solve violence by committing violence."

Detroit has one of the highest homicide rates in the United States — five times more than New York in 1998 — but Mr. O'Hair said bringing back the death penalty is not the answer.

"I do not think the death penalty is a deterrent of any consequence in preventing murders," said Mr. O'Hair, who has been a prosecutor and judge for 30 years. Most homicides, he said, are "impulsive actions, crimes of passion," in which the killers do not consider the consequences of what they are doing.

Nor, apparently, do the people of Detroit see the death penalty as a way of cutting crime. Only 45 percent of Detroit residents favored capital punishment, a poll by EPIC/MRA, a polling organization in Lansing, Mich., found last year; in Michigan over all, 59 percent favored executions, which is roughly the level of support for the death penalty nationally.

To illustrate the point that killers rarely considered the consequences of their actions, a prosecutor in Des

Moines, John Sarcone, described the case of four people who murdered two elderly women. They killed one in Iowa, but drove the other one across the border to Missouri, a state that has the death penalty.

Mr. Sarcone said Iowa prosecutors were divided on the death penalty, and legislation to reinstate it was rejected by the Republican-controlled legislature in 1997. The big issue was cost, he said.

Last year in Michigan, Larry Julian, a Republican from a rural district, introduced legislation that would put the death penalty option to a referendum.

But Mr. Julian, a retired state police officer, had almost no political support for the bill, not even from the Michigan State Troopers Association, he said, and the bill died without a full vote. The Catholic Church lobbied against it.

State officials in Michigan are generally satisfied with the current law. "Our policies in Michigan have worked without the death penalty," said Matthew Davis, spokesman for the Michigan Department of Corrections. "Instituting it now may not be the most effective use of people's money."

Today in Michigan, 2,572 inmates are serving sentences of life without parole, and they tend to cause fewer problems than the general prison population, Mr. Davis said.

They are generally quieter, not as insolent, more likely to obey the rules and less likely to try to escape, he said. Their motivation is quite clear, he said: to get into a lower security classification. When they come in, they are locked up 23 hours a day, 7 days a week, and fed through a small hole in the door. After a long period of good behavior, they can live in a larger cell, which is part of a larger, brighter room, eat with 250 other prisoners, and watch television.

One thing they cannot look forward to is getting out. In Michigan, life without parole means you stay in prison your entire natural life, not that you get out after 30 or 40 years, Mr. Davis said.

In many states, when life without parole is an option the public's support for the death penalty drops sharply. "The fact that we have life without parole takes a lot of impetus from people who would like to see the death penalty," said Ms. Gaertner, the chief prosecutor in St. Paul.

In most states with the death penalty, life without parole is not an option for juries. In Texas, prosecutors have successfully lobbied against legislation that would give juries the option of life without parole instead of the death penalty.

Mr. Davis said a desire "to extract a pound of flesh" was behind many of the arguments for capital punishment. "But that pound of flesh comes at a higher price than a lifetime of incarceration."

Mr. O'Hair, the Detroit prosecutor said, "If you're after retribution, vengeance, life in prison without parole is about as punitive as you can get."