

Equal Protection and the Death Penalty

Mr. Chairman and Members of the Committee. My name is Amanda Arnold and I represent the Montana Human Rights Network. We strongly urge you to support SB306.

The most compelling argument for the continued use of the death penalty is the need to avenge a heinous crime. However, this argument is insufficient to warrant the application of this penalty, since it violates the right of every citizen to receive equal protection under the law as enshrined in the Constitution of the Great State of Montana, the United States Constitution, and the Universal Declaration on Human Rights (see sections below).

[T]he dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his [or her] civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

- *Article 2, Section 4 of the Montana Constitution*

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- *Amendment 14, Section 1 of the U.S. Constitution*

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.

- *Article 7, The Universal Declaration of Human Rights*

There are several ways in which the application of the death penalty violates this right to equal protection under the law. Most prominently, these include the facts that the death penalty is applied inconsistently and arbitrarily to murder crimes, as well as to cases based on the race and socio-economic status of the defendant and victim.

Issue 1: Disproportionality of capital sentencing based on type of crime

Findings from a 2006 government report¹ on the application of the death penalty indicate that capital sentencing is applied arbitrarily and disproportionately across jurisdictions. In a study of over 600 capital sentence narratives, research showed this lack of uniform application of the death penalty. “The resulting unfairness leaves one defendant on death row while others, having committed very similar offenses, were sentenced to life in prison...”

The conclusion of this study highlighted the high probability that the death penalty is applied arbitrarily. Due to the finality of the death penalty, the risk to the justice system of the unequal protection exemplified in this study is absolutely unacceptable.²

¹ *New Jersey Death Penalty Commission Report*, January 2007. Available online at http://www.njleg.state.nj.us/committees/dpsc_final.pdf



² Issue 5: Whether there is a significant difference in the crimes of those selected for the punishment of death as opposed to those who receive life in prison, (*New Jersey Death Penalty Commission Report*, January 2007). http://www.njleg.state.nj.us/committees/dpsc_final.pdf pg 50

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Issue 2: Disproportionality of capital sentencing based on racial bias and socio-economic status

There is no doubt that the death penalty disproportionately affects non whites and people of low socio-economic status. According to the United States General Accounting Office, one of the key indications of racism in the system is that the defendant in the case of a white victim is more likely to receive the death penalty than the defendant in a case involving a non-white victim.³

Indeed, this is echoed in NAACP (National Association for the Advancement of Colored People) data which reveals that black defendants in the case of a white victim are over 14 times more likely to face the death penalty than are white defendants in the case of a black victim (see table below).

PERSONS EXECUTED FOR INTERRACIAL MURDERS IN THE U.S. SINCE 1976	The cases represented in this graph are cases of one defendant executed for the murder of one or more victims of one race. Cases involving multiple victims of several different races are not included here.	White Defendant / Black Victim (15) 
		Black Defendant / White Victim (213) 
		(Death Row Population Figures from NAACP-LDF "Death Row USA (October 1, 2006)")

Apart from this evidence indicating racial bias in the application, there is also clear evidence that people of low socio-economic status are statistically more likely to receive the death penalty.

According to another study, this one in Virginia, there is an undeniable connection between defendants who receive the death penalty and the low quality of that defendant's state-appointed trial attorney. In fact, this study found, "In one of every ten trials resulting in a death sentence, the defendant was represented by a lawyer who would later lose his license to practice law."⁴

There is much to support the accusation that the death penalty is not applied equally across racial and socioeconomic lines. Since the State cannot ensure the equal application of the death penalty even to similar crimes and irregardless of race, socioeconomic status, etc., it has no option but to cease the use of this particular penalty immediately.

For these and the many other reasons you have heard today, I urge you to give SB306 a DO Pass.

Thank You.

³ United States General Accounting Office, Death Penalty Sentencing, February 1990

⁴ This study requested public disciplinary information for every lawyer it could confirm had been appointed to represent a prisoner on death row. That amounted to 135 attorneys. Eight of those lawyers had been publicly disciplined. Four had seen their licenses revoked or had surrendered their licenses with charges pending. Three had been suspended from the bar altogether. None of these disciplinary actions stemmed from representation in a capital case, and three of the lawyers in this group had represented more than one capital defendant who was sentenced to death. *Broken Justice: The Death Penalty in Virginia* (2/10/2004) Available online at http://www.aclu.org/FilesPDFs/broken_justice.pdf