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April 23, 2013

Dear Members of The Delaware House of Representatives,

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I am writing to express support for SB19, legislation to repeal the death penalty for future crimes in Delaware. State legislatures, religious groups, political leaders, and citizens throughout the nation are increasingly questioning and rejecting capital punishment. As the preeminent organization for criminal defense lawyers in the United States, NACDL has been an outspoken critic of the death penalty system, which countless studies have shown to be arbitrary, discriminatory, costly, and fraught with error. Because we believe that no amount of tinkering will save the death penalty from its inherent flaws, NACDL supports abolition.

The death penalty system is very costly for the American taxpayer, and sentencing a defendant to life without parole is much cheaper, freeing up funds for other budget priorities. According to a recent study, even the mere availability of the death penalty as a charging option results in significant costs that drain resources from public safety, crime prevention, and victim services. Petersen, N. and Lynch, M., *Prosecutorial Discretion, Hidden Costs, and the Death Penalty: The Case of Los Angeles County*. Undoubtedly, maintaining the death penalty (as opposed to life without the possibility of parole) also stifles adequate funding for education, health care, jobs programs, and other initiatives that desperately need funding for the people of the State of Delaware.

As expensive as the death penalty is, what is paid for is a broken system that is fraught with error. The fallibility of the death penalty system is beyond question. As pointed out by Supreme Court Justice O'Connor, "If statistics are any indication, the system may well be allowing some innocent defendants to be executed." These statistics indicate that, since reinstatement of the death penalty in 1976, 142 individuals sentenced to death have been exonerated after serving years on death row. Many others have had their sentences commuted to life imprisonment because of serious doubts about their guilt. Tragically, some have been executed despite serious questions concerning their innocence. The death penalty is also applied in a racially and economically discriminatory manner. Studies in a number of states have found irrefutably-flawed practice implicating race and economic bias in death sentencing, as well as jurisdictional disparities. After its careful study of the death penalty in the United States, the United Nations' Human Rights Commission in 1998 issued a report which

concludes: “Race, ethnic origin, and economic status appear to be key determinates of who will, and who will not, receive a sentence of death.”

The cost to Delaware taxpayers is not offset by lower crime rates. Leading criminologists overwhelmingly agree that there is no evidence that capital punishment deters violent crimes, yet each death penalty case will lead to significantly higher costs to the criminal justice system, lead to years of litigation, and hold out a false promise of closure to the family members of murder victims. In a survey of seventy-six eminent criminologists, 88.2% said that scientific literature does not support a deterrent effect of capital punishment. Michael L. Radelet and Traci L. Lacoock, *Do Executions Lower Homicide Rates? The Views of Leading Criminologists*.

Death penalty proponents have attempted to reform capital punishment in a number of states in an effort to limit executions to those cases where the evidence is “foolproof.” But there are myriad of opportunities for human error in areas such as eyewitness identification, crime scene analysis, false or coerced confessions, or merely using the threat of death to get a guilty plea. The fact of the matter is seeking a foolproof death penalty is an impossible task. And once an execution has been carried out, there is no chance for correcting mistakes. The penological interest in executing a small number of persons guilty of murder is not sufficiently compelling to justify the risk of making an irreversible mistake.

The death penalty is on the wane nationally, tracking the growing ambivalence captured in Supreme Court Justice Ginsburg’s recent comments, “Every time I have to participate in a case where someone has been sentenced to death, I feel the same conflict. If I had my way, there would be no death penalty. But the death penalty for now is the law.” It is time for Delaware to move beyond this law.

The death penalty is unjust, uncivilized, very costly, and inconsistent with the fallibility of our justice system. NACDL urges you to stand with us and the growing number of concerned Delaware citizens by supporting SB19.

Sincerely,

A handwritten signature in black ink, appearing to read "SDB", with a stylized flourish at the end.

Steven D. Benjamin
President, NACDL