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February 13, 2013

Dear Maryland Senate and House of Delegates Members:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I am writing to express support for SB276/HB295, legislation to repeal the death penalty in Maryland. NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's approximately 10,000 direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system.

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 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 1978, 141 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.

Maryland is not immune to these flaws. In 1984, Kirk Bloodsworth, a former Marine with no criminal record, was convicted in Maryland and sentenced to death for a brutal rape and murder that he did not commit. After 9 years in prison, Mr. Bloodsworth became the first inmate in the nation to be sentenced to death and then exonerated by DNA.

The death penalty is also applied in a racially and economically discriminatory manner. Studies in a number of states, including that of Maryland's Commission on Capital Punishment, released in 2008, have

found irrefutably-flawed practices implicating race and economic bias in death sentencing, as well as jurisdictional disparities and significant cost concerns. After its careful study of the death penalty in the United States, the United Nations' Human Rights Commission in 1998 issued a report which rightly concludes: "Race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a sentence of death."

Leading criminologists overwhelmingly agree 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*.

According to the Urban Institute's 2008 report *The Cost of Maryland's Death Penalty*, since reinstating the death penalty in 1978, the state of Maryland has spent at least \$186 million in associated costs. During that same 33 year period, Maryland carried out only five executions while approximately 80 percent of death penalty sentences were reversed. This means the cost of one execution in the state of Maryland is \$37.2 million. According to a recent study, 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 Maryland. The proposed legislation would not only save the state money, but has a provision that would divert money from the general fund to the State Victim of Crime Fund.

The Maryland General Assembly passed well-intended legislation in 2009 in an effort to limit executions to those cases where the evidence is "foolproof." But 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 that 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 Maryland to move beyond this law.

The death penalty is unjust, uncivilized, and inconsistent with the fallibility of our justice system. NACDL urges you to stand with us and the growing number of concerned Marylanders including the Maryland Commission on Capital Punishment and the Maryland Bar Association, by supporting SB276/HB295.

Sincerely,

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

Steven D. Benjamin
President