



SENATE JOURNAL
SENATE NO. 20 97
American Civil Liberties Union
of Montana

Power Block, Level 3
PO Box 1317
Helena, Montana 59624
406-443-8590
www.aclumontana.org

February 8, 2011

The American Civil Liberties Union (ACLU) supports SB 185 to repeal the death penalty for a variety of reasons:

We oppose capital punishment as a clear violation of the Eighth Amendment's ban on cruel and unusual punishments. One reason the death penalty presents such a clear Eighth Amendment violation is that it is routinely imposed based on wholly improper factors, such as race, class, venue, the quality of counsel, whether the defendant is a resident of or a visitor to the jurisdiction in which the case is tried. Unequal justice is no justice at all.

In 2005, the U.S. Supreme Court indicated in *Roper v. Simmons* that the death penalty must be reserved for "the worst of the worst," i.e. offenders who commit "the most serious crimes and whose extreme culpability makes them the most deserving of execution." Quality of counsel, however, is a far better predictor of who gets sentenced to death and ultimately executed. The death penalty is arbitrary and capricious, in part, because the "worst of the worst" most readily describes the quality of representation of those subject to it.

Diminished capacity: Application of the death penalty to individuals suffering from serious mental illnesses or diminished intelligence does not comport with contemporary standards of decency and accordingly, violates the Eighth Amendment's prohibition on cruel and unusual punishment.

Innocence: The death penalty is the ultimate denial of civil liberties. To date, 139 inmates were found to be innocent and released from death row. There have been 266 post-conviction DNA exonerations in United States history. These stories are becoming more familiar as more innocent people gain their freedom through post-conviction testing. They are not proof, however, that our system is righting itself. The common themes that run through these cases — from global problems like poverty and racial issues to criminal justice issues like eyewitness misidentification, invalid or improper forensic science, overzealous police and prosecutors and inept defense counsel — cannot be ignored and continue to plague our criminal justice system.

Cost: Montana's Office of Public Defender needs \$.5M per year to be ready to handle the challenge of a capital case once the death penalty is on the table as an option. The real costs for prosecuting are not reliably tracked. However, the County where a capital case is charged assumes an enormous financial burden that could break the bank for many, if not most, counties in Montana. The costs to the state of Montana for the prosecution's share of appellate litigation, which unbelievably are also not carefully tracked, need also to be factored annually into the equation. It is a poor return on investment.

Respectfully submitted
Scott Crichton, Executive Director