



OFFICE OF THE DISTRICT ATTORNEY

TWENTIETH JUDICIAL DISTRICT

Stanley L. Garnett, District Attorney

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF HOUSE BILL 13-1264

Good afternoon, Mr. Chairman. Thank you for the opportunity to testify today regarding House Bill 13-1264 to replace the death penalty in Colorado for all crimes committed on or after July 1, 2013.

I am the elected District Attorney for Colorado's 20th Judicial District. My jurisdiction is a rural and urban mix of 305,000 people and is the 6th largest prosecutor's office in Colorado. I manage a budget of around \$5 million and a staff of 70, including 30 sworn prosecutors. Together, we prosecute nearly 2000 felonies each year, as well as several thousand misdemeanors and serious traffic cases. Last year, my office tried six homicide cases. We have obtained guilty verdicts or convictions on fifteen homicides (8 of which were first degree murders) since I took office in January of 2009.

I am here today to testify in favor of House Bill 13-1264 to replace the death penalty in Colorado with mandatory life without parole. As many of you know, I published a guest opinion in December of 2012, which has been widely circulated, identifying practical problems with the death penalty in Colorado. To save time, I have attached copies of this guest opinion to this written version of my testimony.

I approach this issue as a person with the responsibility to manage and run a prosecutor's office. I am a pragmatic person and my position on the death penalty is pragmatic; my view is that, for three basic reasons, the death penalty is not a practical tool for law enforcement in Colorado.

First there is the expense, which is several million dollars at least (more than the entire annual operating budget for my office), for any case in which the death penalty is sought, all of which must be funded by state and local governments.

The next is the amount of time involved in a death penalty case. Every murder case that has occurred within my first term has been taken to verdict and sentence within one year of the murder. Every prosecutor knows that prompt resolution is in the interest of the family of the victim, especially in a case involving a violent death. One of the major problems with the death penalty is that it takes years to resolve the case, years which can take an extreme emotional toll on the grieving families of the victim by failing to provide closure.

The final concern I noted in the guest opinion is the randomness of the death penalty. Because it is sought in only a tiny fraction of cases, it is by definition random. Nothing illustrates this like

the fact that all of the men on Colorado's death row are from the same county and went to the same high school. In the nearly 140 years since statehood, boulder county has never had a death sentence handed down, and yet boulder county has one of the lowest crime rates generally (and homicide rates specifically) of any comparable county in the U.S.

Those are the practical problems with the death penalty that lead me to support House Bill 13-1264 and that I explain in the attached guest opinion.

In response to my guest opinion, a number of folks have made arguments in support of the death penalty and I anticipate that most of them will testify here this afternoon. I take most seriously those arguments that are put forth by other elected prosecutors. These are my colleagues whom I respect and agree with on many issues and their views are honorable. However, I disagree with their conclusions on the repeal of the death penalty. Let me tell you why.

The arguments in favor of the death penalty are essentially three fold. First, there is the argument that "these are very bad people," or as Greg Dobbs said in his Denver Post opinion piece that was published on Sunday, that they are "pieces of scum." The fundamental problem with this argument is that it is beside the point. As prosecutors we deal with many, many very bad people, many of whom have done unspeakable things to other human beings. The question is not whether these people are bad, or even if they are hypothetically deserving of execution. The question is whether a system can be devised to execute only those truly deserving of death; a system that is fair, efficient, consistent, not influenced by race or other improper factors and that doesn't create undue collateral problems or pragmatic nightmares. Our history has shown that such a perfect system is not possible and that endlessly tinkering with a system devised by human beings to make it absolutely flawless is fruitless. As Justice Blackmun said in his famous 1994 dissent, trying to get the procedure for the death penalty exactly right is nothing more than "tinkering with the machinery of death" and, I suggest, is a hopeless exercise and unseemly for a civilized society.

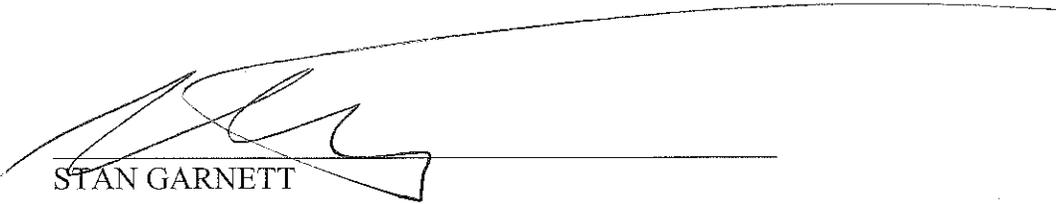
The second argument I've heard in favor of the death penalty from elected prosecutors, and one that I'm sure you will hear this afternoon because it is one the Colorado Attorney General himself has made, is that the death penalty is justified from the point of view of what they call "societal self-defense". This is an argument that concedes that very, very few defendants are truly worthy of the death penalty, but maintains that there are a certain number of defendants who commit terrorist acts and other very serious murders whom society must be able to execute to be able to protect itself. The fundamental problem with such an argument is that there is no credible evidence that the existence of the death penalty is a deterrent to specific acts of violence. Because modern prisons are very secure and virtually escape proof, the idea that certain very bad people need to be killed to be able to protect society is, I believe, facetious; trying to devise a statute that would do so is, again, pointless "tinkering with death." This legislature has better things to do.

And the final argument I've heard, and I anticipate you will hear from elected prosecutors this afternoon, is that having the death penalty on the books is necessary to assure that pleas of guilty to first degree murder with life without parole sentences can be obtained on tough cases. This justification surprises me because there are many practical and ethical problems with this

position. Every prosecutor agrees that it is an inappropriate use of the death penalty to threaten it to coerce a guilty plea; doing so is both unethical and immoral.

I note, in closing, that this debate is not new; repealing the death penalty has been discussed many times in Colorado's history. It was once repealed in the late 19th century and my association, Colorado District Attorney's Council (CDAC) formerly supported its repeal in 1965, (though CDAC remains neutral this year.)

Colorado has a fair and effective justice system. The death penalty is not a practical or important part of it and it should be repealed. House Bill 13-1264 should be passed. I am pleased to answer any questions.



STAN GARNETT

DA: Death penalty not practical in Colorado

By Stan Garnett Boulder Daily Camera

Posted:

DailyCamera.com

As the Colorado legislature prepares for the possible consideration of a bill to repeal the death penalty, I have offered my views on the practicality of the death penalty to many in the legislature. I am not morally or philosophically opposed to the death penalty. As the elected District Attorney in Colorado's 20th Judicial District (Boulder County), I see plenty of violence where a state imposed imposition of death is hypothetically acceptable to me, and not morally objectionable, as a punishment. My view of the human condition recognizes that human beings are capable of unspeakable acts towards each other. And, as long as the death penalty is the law of Colorado, my office will, in consultation with a victim's family, formally review every class one felony to determine whether it will be sought.

However, the practical problems with the death penalty make it of limited relevance to Colorado law enforcement:

The first problem is the expense. Prosecuting a death penalty case through a verdict in the trial court can cost the prosecution well over \$ 1 million dollars (not to mention the expense incurred by the judiciary and the cost of defense counsel, which is almost always funded with taxpayer funds in a death penalty case). To put this in context, my total operating budget for this office is \$4.6 million and with that budget we prosecute 1,900 felonies, per year (and my office tried nearly 50 felony jury trials, including six homicides in calendar 2012). Given that a first degree murder conviction carries an automatic life without parole sentence, and that convicted class one felons serve their life sentence in modern, highly secure prisons where escape is impossible, the additional expense to obtain a death sentence hardly seems cost effective and adds nothing to a primary goal of the justice system: to maintain public safety. The appellate costs are even greater: the estimate is that a 1994 Colorado death verdict currently pending before the U.S. Supreme Court has cost the state of Colorado nearly \$18 million to fund through all the appeals.

The next is the time. Every murder case that has occurred in my first term we have gotten to verdict and sentence within a year of the murder. Even in jurisdictions that are less efficient than the 20th judicial district, a murder trial where the death penalty is not sought will reach verdict many months sooner than one where it is sought. In fact, a death penalty case can take several years to get to verdict in the trial court. A prompt trial permits the victim's family to have closure and put the case behind them because the life without parole sentence is imposed immediately. Once sentenced to life without parole, the defendant fades from public consciousness and the victim's family can begin healing. Even when a death penalty verdict is obtained, after the lengthy trial court process, death penalty appellate litigation can go on for years (18 years in the Colorado case currently before the U.S. Supreme Court -- so far) with multiple appellate decisions on arcane legal issues that are very difficult for the victim's family to appreciate. Often during this period of time, the defendant can achieve a sort of morbid "folk hero" status, as those advocating

for his commutation publicly discuss the killer's mental health, childhood and other issues, a difficult experience for victim's families, still coping with the violent death of a loved one.

My final concern is the randomness. Most murders, charged as first degree, could qualify to seek the death penalty under the Colorado statutory scheme. Though Boulder County has had plenty of heinous murders over the years, there has never been a death verdict imposed here in the nearly 140 years since statehood (the one time it was sought here, in 1978, the case plead out during jury selection due to the unwieldiness of seating a death qualified jury). The 18th Judicial District (Arapahoe/Douglas County), on the other hand, has several pending death cases currently...for murders that are not significantly different than what we prosecute in Boulder. What is the point of a penalty that is only sought in a tiny percentage of the cases where it could be sought, or where geography is a factor in whether it is sought? Obviously, the risk of racial or other subjective factors being considered (or appearing to be considered) in selecting who is put to death is significant.

As the state moves into the public discussion that should accompany consideration of possible repeal of the death penalty, these are issues that should be kept in mind.

Stan Garnett is the Boulder County District Attorney.