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December 13, 2012

The Honorable Martin O'Malley

Office of the Governor

100 State Circle

Annapolis, Maryland 21401-1925

Dear Governor O'Malley:

The National Association of Criminal Defense Lawyers (NACDL) writes to express support for legislation to repeal the death penalty in Maryland and to thank you for your ongoing attention to this deeply important issue. 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 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 1973, 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.

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 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 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. According to the Urban Institute's 2008 report *The Cost of Maryland's Death Penalty*, since reinstituting 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, other initiatives that desperately need funding for the people of the State of Maryland.

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 must be abolished.

The death penalty is unjust, uncivilized, and inconsistent with the fallibility of our justice system. The Maryland Commission on Capital Punishment recommends the repeal of the death penalty. The Maryland Bar Association favors repealing the death penalty. NACDL urges you to stand with us and the growing number of concerned Marylanders by supporting legislation that abolishes the death penalty in Maryland.



Steven D. Benjamin
President
National Association of Criminal Defense Lawyers