

July 14, 2005

**CPCS Opposes Proposals to Reinstate
The Death Penalty in Massachusetts**

I am here today to reiterate the Committee for Public Counsel Services' (CPCS) unalterable opposition to the death penalty. CPCS stands with all major religious groups in condemning capital punishment because it promotes a culture of vengeance and death. CPCS stands with virtually all democratic nations, which have abolished the death penalty as a vestige of a less civilized and more bestial age. CPCS emphasizes the inevitability of error in any factfinding system which depends, as ours must, upon the actions and the judgment of fallible human beings. Finally CPCS stands with its impoverished clients, who receive precious few fair shakes from the day they are born; for it is they, and they alone, who would be the subject of the state's proposed experiment to determine whether it is possible, with exact and unerring justice, who among convicted murderers shall live and who shall die. CPCS stands also with former District Attorney Ralph Martin and several current District Attorneys, who recognize that Massachusetts must invest in crime-reduction strategies which have proven to be both effective and cost-effective, rather than embarking upon a spending spree for a new death penalty system whose public safety "value," if any, would be purely symbolic.

I have been asked today to address the issue of cost. It is certainly timely to do so. I must emphasize to this Committee what it and the general public already know: our system for providing counsel for indigent criminal defendants, and other indigents in civil cases for which CPCS bears responsibility, is already in a state of constitutional

violation due to the Commonwealth's failure to pay its legitimate and necessary cost. This is the plain truth. It is widely believed that within a week or two, the General Court will undertake its summer recess without having addressed the lack of funding for indigent representation which has already left hundreds of indigent persons without the lawyer to which they are entitled under the law. This is nothing short of scandalous. A second plain truth is that in every death penalty state in America, application of the death penalty swallows up a vastly disproportionate share of criminal justice and judicial resources. New York, to cite but one example, has just managed to free itself from the fiscal shackles of a death penalty law which cost millions upon millions of dollars, and produced nothing but unrealistic expectations and gushing expenditures. But here in Massachusetts, where we have demonstrably failed to fulfill our basic obligation to fund the Constitution's counsel mandate, it should be unthinkable and it is absolutely unacceptable to spend one penny toward the reinstatement of capital punishment.

Death penalty costs, of course, far exceed one penny. With respect to what I might call the "traditional" death penalty bills before you--those which follow the trajectory of the defeated bills proposed since 1991 by Governors Weld, Cellucci and Swift--the answer is that such bills would, by their breadth, increase indigent counsel costs by a minimum of fifty million dollars annually. Much of this cost is due to the broad application of the death penalty in those bills to many categories of first-degree murder. (Our detailed 1999 estimate of additional costs under a predecessor bill was \$47.8 million.) One might be led to believe that the narrower scope of Governor Romney's bill would reduce the extent of such cost increases. One would be wrong to think so.

Even if one were to assume, with Professor Zimring, that the bill's narrow coverage and extensive protections make it "the first effort to write a solely symbolic criminal statute," *The New York Times Magazine* (December 12, 2004, at 73), it would be a very expensive piece of symbolism indeed. Its provisions for stringent capital defense standards, at least two capital case qualified defense counsel, for two juries, for extensive pretrial proceedings and postconviction review, its two new commissions and its plethora of new procedures guarantee significant expense, even if no person were ever prosecuted under it.

But this bill is not merely symbolic. No sooner had the bill been filed, and subjected to predictable criticism that it was too narrowly drawn, than the Governor's press secretary admitted that "if the Legislature wants to add more categories to the crimes that would be subject to the death penalty we would support that effort."

Even on an optimistic fiscal assumption that enactment of this bill would cost "only" an additional \$25 million per year, that amount happens to be identical to the amount it would take to restore our indigent counsel system to a state of minimal compliance with constitutional norms. Funding for that first and fundamental obligation of the Commonwealth must take precedence over the waste of scarce public funds which enactment of any of these death penalty bills would ensure.

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