LIVING ALOHA:
A CALL TO HAWAI‘I PRO-DEATH LEGISLATORS ON NOT REINSTATING THE DEATH PENALTY

Second Year Seminar Final Draft

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I. INTRODUCTION

“If all that I and many people who speak against the re-institution of Capital Punishment falls on deaf ears... then I insist that we must have public executions... All legislators who vote for the return of capital punishment shall act as executioners... Each shall take his turn on the basis of alphabetical rotation... Severed heads, representing all the major ethnic groups, shall be impaled on posts at the entrances of our Capitol Building to inform the world of the spirit of Aloha of our people and the impartiality of our laws.”¹

This paper argues why the Hawai‘i Legislature should not reinstate the death penalty that was abolished² over half a century ago. Despite repeated attempts by Hawai‘i pro-death supporters to restore it, proponents fortunately have been largely unsuccessful at reviving it in both the public and political arenas. It seems the vast majority of Hawai‘i’s lawmakers are quite content with leaving the death penalty in the not-too-distant uncivil past where it belongs. Nevertheless, bills have been repeatedly introduced over the past five decades by lawmakers who deem it their political duty to stoke the slightest of burning embers of the capital punishment debate, perhaps partly in


hopes that community outrage at a recent murder will propel their bill into the legislative stratosphere of hot topics.\(^3\)

Outrage and disgust over the commission of heinous and unspeakable crimes is certainly appropriate and understandable. This author acknowledges that people can and do commit atrocious crimes for which especially severe punishment is warranted. However, as attractive as capital punishment is as a response to extremely horrible crimes, Hawai‘i legislators ought to consider the various arguments surrounding the debate, as well as the potential impact on our worldwide reputation as the Aloha State.

The most common arguments for and against the death penalty are retribution, deterrence, economics, and bias, caprice and error. \textit{Retribution} is the most significant and pervasive justification for proponents—“justice”, “just desserts”, or “an eye for an eye” principles\(^4\). Opponents say that life imprisonment in a maximum-security prison is also strongly retributive\(^5\), that literally making the punishment fit the crime is not found in any other area of criminal law\(^6\), and that all human life is valuable\(^7\). \textit{Deterrence} is the logical justification asserted by proponents that the ultimate penalty of death would make

\(^3\) Editorial, \textit{Hawai‘i Must Say No to the Death Penalty}, \textit{THE HONOLULU ADVERTISER}, January 11, 2003, at A6, suggesting State Senator Willie Espero’s intent to introduce a capital punishment bill relied on the “heat of recent community outrage to propel his bill.” He proposed to (and subsequently did) submit bills SB404 and SB405, which would impose the death penalty on a criminal who sexually assaults and murders a minor. He proposed the bills because of the then recent murder of 11-year old Kahealani Indreginal, which shocked and outraged the local community. Sexual assault apparently was not an issue in the case and the punishment could not apply retroactively to Kahealani’s murderer.

\(^4\) VICTOR STREIB, DEATH PENALTY IN A NUTSHELL 9 (2003).


\(^6\) STREIB, \textit{supra} note 4, at 12.

\(^7\) STREIB, \textit{supra} note 4, at 13.
anyone think twice before doing it, and executing a convicted murderer will reduce future murders.\textsuperscript{8} Opponents contend that the threat of death rarely deters criminals.\textsuperscript{9} 

\textit{Economics} is the fiscal cost of implementing the death penalty and prosecuting a death penalty case. Proponents say that executing an offender saves us the cost of providing room and board in a maximum-security prison for the rest of the offender’s life. Opponents argue that the death penalty is much more expensive then life imprisonment.\textsuperscript{10} 

\textit{Bias, caprice, and error} is the difference between death penalty theory and actual practice.\textsuperscript{11} Opponents argue that the actual practice of the death penalty results in discrimination based on race of offender and victim, gender of offender, and poverty level of offender and victim.\textsuperscript{12} They also argue that it is unpredictable and is based on the “luck of the draw”—on whether the capital jury or prosecuting attorney leans more toward capital punishment than others, and on variability in the ability, support-level, and work ethic of capital defense counsel.\textsuperscript{13} The ultimate end result of discrimination, caprice and bad luck is clear error, which is the conviction and sentencing to death of an innocent person.\textsuperscript{14}

\begin{itemize}
  \item \textsuperscript{8} STREIB, \textit{supra} note 4, at 14, 16.
  \item \textsuperscript{9} Raymond Bonner and Ford Fessenden, \textit{Executions Don’t Reduce Homicides, Study Says}, HONOLULU STAR BULLETIN, September 22, 2000, at A1.
  \item \textsuperscript{10} STREIB, \textit{supra} note 4, at 24.
  \item \textsuperscript{11} STREIB, \textit{supra} note 4, at 17.
  \item \textsuperscript{12} STREIB, \textit{supra} note 4, at 18.
  \item \textsuperscript{13} STREIB, \textit{supra} note 4, at 19.
  \item \textsuperscript{14} STREIB, \textit{supra} note 4, at 21.
\end{itemize}
The death penalty debate necessarily engenders discussion concerning penological, philosophical, social, and social scientific issues. This paper will focus on these extralegal issues. There are four primary reasons why capital punishment should not be reinstated in Hawai‘i: First, it does not align with the spirit of Aloha that makes Hawai‘i unique from any other place on this earth. Second, it was not successful in Hawai‘i in the not-too-distant past. Third, death penalty sentencing and executions elsewhere are on a historical decline. Last, it would not be successful in Hawai‘i in the present.

II. HISTORICAL PERSPECTIVE: KEY U.S. SUPREME COURT DEATH PENALTY CASES

“Not even the most fundamentalist Christian believer uses the “eye for an eye” concept for any crime except murder. No one suggests a rape for a rape, an assault for an assault, adultery for adultery. Why a murder for a murder?”

The death penalty debate is also framed in part by leading legal issues and cases surrounding the death penalty controversy. These issues and cases are being discussed for purposes of historical context and perspective, but will not be the focus of this paper. Most often, the Eight Amendment Cruel and Unusual Punishments Clause is invoked in cases heard by the U.S. Supreme Court, and less often some other provision of the Constitution is invoked, such as the Equal Protection Clause of the Fourteenth

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16 A BILL FOR AN ACT RELATING TO CAPITAL CRIMES: HEARING ON S. 184 BEFORE THE SEN. JUDICIARY COMM., 1977 LEG., 9TH SES. (HAW. MAR. 14, 1977) (TESTIMONY OF MARIAN EHRHORN, CONCERNED CITIZEN OPPOSING THE BILL).

17 “Excessive bail shall not be required, not excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST. amend. VIII (italics added).
Amendment\textsuperscript{18}, or the Double Jeopardy prohibition of the Fifth Amendment\textsuperscript{19}, or the Impartial Jury/Effective Assistance of Counsel provision of the Sixth Amendment.\textsuperscript{20,21}

In 1972, for the first time in American History, the U.S. Supreme court held in the landmark case of \textit{Furman v. Georgia}\textsuperscript{22} that capital punishment violated the cruel and unusual punishment provision of the Eighth Amendment because it was arbitrary and capricious as applied. In effect, \textit{Furman} terminated the previous death penalty era by striking down all 40 then-existing death penalty statutes.\textsuperscript{23,24} However, before the end of 1972, Florida and Utah enacted new death penalty statutes to conform to Supreme Court

\footnotesize
\textsuperscript{18} “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; \textit{nor deny any person within its jurisdiction the equal protection of the laws}.” U.S. CONST. amend. XIV, § 1 (italics added).

\textsuperscript{19} “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; \textit{nor shall an person be subject to the same offence to be twice put in jeopardy of life or limb}; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; \textit{nor shall private property be taken for public use, without just compensation}.” U.S. CONST. amend. § V (italics added).

\textsuperscript{20} “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, \textit{by an impartial jury of the State and district wherein the crime shall have been committed}, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, \textit{and to have the Assistance of Counsel for his defence}.” U.S. CONST. amend. § VI (italics added).

\textsuperscript{21} LATZER, \textit{supra} note 15, at 1.

\textsuperscript{22} 408 U.S. 238 (1972) (5-4, the death penalty, as administered at the time, violates the Eighth Amendment).

\textsuperscript{23} STREIB, \textit{supra} note 4, at 7.

guidelines, followed by 15 more states in 1973. By the date of the next landmark decision in 1976, at least 35 states and the federal government had enacted new death penalty statutes. Then, in July of 1976, the Court overturned Furman in the landmark case of Gregg v. Georgia and rejected the view that capital punishment is per se cruel and unusual, permitting guided discretion statutes providing for sentencing guidelines for the judge and jury when deciding whether to impose death, and bifurcated trials in which there are separate deliberations for guilt and penalty phases of the trial. Some states enacted mandatory death penalty laws for certain types of murder, apparently believing that it would avoid the problem of inconsistent application, but these statutes were declared unconstitutional in Woodson v. North Carolina, which was decided the same day as Gregg. Nonetheless, death penalty states were back with a vengeance, vigorously applying the new statutes and sentencing over 460 capital offenders by early 1976, already functioning even before the Gregg decision was handed down. In 1977, the Supreme Court found unconstitutional the death penalty in Coker v. Georgia for the


26 STREIB, supra note 4, at 7.

27 428 U.S. 163 (1976) (7-2, the death penalty is not a per se violation of the Eighth Amendment).


29 LATZER, supra note 15, at 1.

30 428 U.S. 280 (1976) (5-4, mandatory death penalty for all first-degree murderers violates the Eighth Amendment).

31 STREIB, supra note 4, at 7.

rape of an adult woman when the victim is not killed. The main effect of *Coker* was that it restricted the death penalty to crimes in which the defendant caused the death of another human being.

In more recent years, the Supreme Court has exempted from the death penalty those with mental retardation (*Atkins v. Virginia*)\(^{33}\), and offenders who were under the age of eighteen when their crimes were committed (*Roper v. Simmons*)\(^{34}\). However, the Court in *Baze v. Rees*\(^{35}\) upheld Kentucky’s method of administering lethal injections as being constitutional. *Baze*, decided in April of 2008, has nationwide implications because the specific lethal injection concoction used in Kentucky is the same as virtually all states that administer lethal injections. Before the decision was handed down, the Court put executions across the country on hold since September of 2007 while it examined the constitutionality of this most common form of executing prisoners.\(^{36}\) The recent decision has essentially cleared the way for a number of states to proceed with scheduled executions.\(^{37}\) Currently, ten states\(^{38}\) officially have “de facto” moratoria\(^{39}\) on

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33 536 U.S. 304 (2002) (by a vote of 6-3, executing the mentally retarded violates the Eighth Amendment ban on cruel and unusual punishment).

34 543 U.S. 551 (2005) (by a vote of 5-4, held it is unconstitutional to impose capital punishment on offenders from crimes committed under the age of 18 because it violates the Eighth and Fourteen Amendments).

35 553 U.S. ___, 128 S.Ct. 1520 (2008) (by a vote of 7-2, upholding Kentucky’s method of lethal injection as constitutional and not a violation of the Eighth Amendment cruel and unusual clause because it does not violate legal precedent prohibiting types of lethal injections that inflict “unnecessary pain.”)


executions because of lethal injection litigation. Texas, which leads the nation in executions, is reported to have an unofficial moratorium.\textsuperscript{40} The total number of people on death row for all 11 states combined is a 1,837.\textsuperscript{41}

Hawai‘i had already abolished the death penalty before the U.S. Supreme Court invalidated state death penalty statutes in \textit{Furman v. Georgia} in 1972. Even after jurisdictions were required to and did enact new death penalty schemes, and despite the Supreme Court reaffirming the use of capital punishment when it validated the revised death penalty sentencing statutes from three states in \textit{Gregg v. Georgia} in 1976, Hawai‘i did not follow suit along with the many other states that reinstated the death penalty. One plausible explanation could be that Hawaii’s past experience with a discriminatory death penalty has not been forgotten. Another explanation is that the Aloha Spirit truly exists and retributive justice is misaligned with that spirit.

III. CAPITAL PUNISHMENT DOES NOT ALIGN WITH THE SPIRIT OF ALOHA

“I appeal to all the legislators to consider the appalling consequences of this bill which would go a long way

\textsuperscript{38} Arkansas, California, Delaware, Florida, Maryland, Missouri, Montana, Nebraska, North Carolina, and Tennessee. \textit{See} American Bar Association, \textit{Death Penalty Moratorium Implementation Project} (last visited Feb. 1, 2009) \url{http://www.abanet.org/moratorium/states/status.html}

\textsuperscript{39} De facto Moratorium: A halt on executions that is a secondary result of some other legal action. These jurisdictions retain the death penalty (presently on inactive status); however, due to a challenge to the jurisdiction’s method of execution (in these cases, lethal injection), no execution may go forward until the underlying legal dispute concerning the method of execution is resolved. \textit{See} American Bar Association, \textit{Death Penalty Moratorium Implementation Project} (last visited Feb. 1, 2009) \url{http://www.abanet.org/moratorium/states/status.html}

\textsuperscript{40} \textit{See} Supreme Court Upholds Lethal Injection Protocol, NPR (last visited Mar. 7, 2009) \url{http://www.npr.org/templates/story/story.php?storyId=89680763}

\textsuperscript{41} \textit{See} American Bar Association, \textit{Death Penalty Moratorium Implementation Project} (last visited Feb. 1, 2009) \url{http://www.abanet.org/moratorium/states/status.html}
toward destroying whatever interracial harmony and aloha have been built up in the past few decades.”

“Another reason to reject restoration of the penalty is that it would be contrary to the reputation for sensible humane public policy that Hawai‘i enjoys.”

Just before obtaining statehood in 1959, Hawai‘i legislators officially declared by joint resolution that Hawai‘i’s nickname is “The Aloha State.” The nickname was subsequently codified upon statehood. One senator stated, in support of the resolution, that he believed the term “Aloha” to have great significance as a matter of tradition, as a blessing of a gift from the Polynesian peoples to all the inhabitants of the islands. He also stated that he was sure the term was known and was being made better known around the world. Of course today, Hawaii is known worldwide for its Aloha Spirit.

A. What Is The Aloha Spirit?

Defining and describing Aloha seems elusive because there really are no words that can truly convey the essence of the Aloha Spirit. There are many meanings of Aloha, as well as forms of expression. A powerful meaning of Aloha is found in its

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44 Senate Joint Resolution No. 75, as Joint Resolution 1 (1959).

45 The official state nickname was subsequently codified as HAW. REV. STAT. § 5-7 (West, WESTLAW through end of 2008 2nd Sp. Sess.).

46 Senate Journal, 23rd day 158 (1959).

47 See supra note 46.

direct translation, hā, meaning “breath of life.”49 The ancient Hawaiian greeting of Aloha was originally reserved for loved ones and close family.50 It involved rubbing noses, saying Aloha and inhaling each other’s breath (or hā).51 This was considered the most heartfelt and sincere welcome—to share your life energy with another person—and is the foundation of Aloha.52 It has also been defined as “alo”53 (in the presence of God) and “ha” (the breath of life), translated to mean “in the presence of God is the breath of life”.54 In strong contrast, extinguishing someone’s life by imposition of the death penalty is the antithesis of Aloha because it is the cutting off of and not the giving of the breath of life.

A more contemporary meaning of Aloha is love, mercy, compassion, and pity 55, as translated by the late Mary Kawena Pukui56, who was an internationally recognized

51 RENATA, supra note 50, at 12.
52 RENATA, supra note 50, at 12.
56 Mary Kawena Pukui was born in Ka’u, Hawai‘i in 1895. She was the daughter of Mary Paahana Kanakaole (a native Hawaiian woman who came from a respected line of medical kahunas) and Henry Wiggin (a Caucasian man originally from Salem, Massachusetts, the descendent of a 17th-Century poet). She was raised by her maternal Hawaiian grandmother, who taught her the native Hawaiian language, dances, chants and legends, until she was six. After her grandmother’s death, she went to live with her parents. Her mother spoke only Hawaiian, and her father spoke only English. Around 1928 while at the Bernice P. Bishop Museum, she began translating Hawaiian writings into English. Her most significant work was the “Hawaiian-English Dictionary” completed in 1957, which she co-authored. She died in 1986 at age 91 in a convalescent home in Honolulu.
scholar, expert, and authority on the Hawaiian culture, literature and language. She is considered to be among the most beloved of all Hawaiian scholars and co-authored the Hawaiian Dictionary, which today is still the leading source on Hawaiian-English language translation.

Today, the modern tradition of Aloha is not just reserved for loved ones and close family, but is extended to everyone. The Aloha Spirit is so powerful that if you live it, it can change the way you see yourself, your relationships, and your world. It aims to move you from “me” (self-preservation) to “we” (collective preservation) and break down manmade barriers of prejudice, injustices, discrimination, hatred and jealously. It is a way of life. It is an act of kindness, friendliness, helpfulness, and genuine caring. It is a strong emotion that connects us to each other, instilling a sense of love, peace and

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Bishop Museum Archives (last visited Apr. 25, 2009)  
<http://www.bishopmuseum.org/research/cultstud/libarch/archsamples.html>


60 WHEELER, supra note 54, at 11.

61 WHEELER, supra note 54, at 41.

62 WHEELER, supra note 54, at 12.
joy that binds us together as human beings.\footnote{WHEELER, supra note 54, at 12 and 17.} It is an attitude of humility and selflessness, thinking of others as more important than yourself.\footnote{“Be humble, thinking of others as better than yourself.” PHILLIPIANS 2:3 (NLT). Footnoted: Being humble involves having a true perspective about ourselves (see Romans 12:3). It does not mean that we should put ourselves down.}

The Aloha Spirit is not tangible; it cannot literally be seen, touched, tasted, heard, or smelled. However, manifestations of the Aloha Spirit can be experienced in, through, and around us all the time, giving us insight and understanding into what it is and how it works in peoples’ lives. For example, the presence of the Aloha Spirit can be experienced by \textit{sight}—watching a graceful hula dancer; \textit{touch}—a hug exchanged between two people, accompanied by a friendly hello or goodbye kiss on the cheek; \textit{taste}—sharing and enjoying a meal together, potluck style; \textit{hearing}—saying “Thank you,” “Forgive me,” “I’m sorry,” or “I love you”; and \textit{smell}—inhaling the sweet fragrance of a pākāke\footnote{“Arabian jasmine (Jasminum sambac), a shrub with fragrant, small white flowers used for leis.” PUKUI ET AL., supra note 49, at 126.} lei. All of these examples, when actually experienced, evoke a multitude of feelings such as gratitude, happiness, peace, belonging, acceptance, and love. The Aloha Spirit also empowers us to essentially live the “golden rule” no matter where we go and with whom we come into contact: Treat people as we would like to be treated, only do it first.\footnote{WHEELER, supra note 54, at 18.}; meaning give without expectation, appreciate, value, respect, honor, show common courtesy to, and love everyone, despite differences.
The late Aunty Pilahi Paki, a well-respected and revered kupuna (elder) from Lahaina, Maui, is remembered by many as the greatest proponent of Aloha. It is said that she believed that in this century the world would turn to Hawaii as they searched for world peace because Hawai‘i had the key, and that key is Aloha. With the recent presidential election of extremely popular local born kama‘aina Barack Obama, perhaps Aunty Pilahi Paki was prophetic in her prediction. As Michele Obama has said, “You can’t understand Barack until you understand Hawai‘i”, referring to his cool and calm demeanor even while under intense scrutiny and pressure.

If Hawaii legislators embrace and exemplify either the old or contemporary meaning of Aloha and believe that upholding our reputation as having sensible humane public policy is important, then it ought to be difficult for them to make the case for restoring capital punishment. Taking life is in direct opposition to giving (or preserving) life. Retributive justice is in direct opposition to mercy and compassion.

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67 The Hawaiian-English translation of kupuna is “grandparent, ancestor, relative or close friend of the grandparent’s generation, grandaunt, granduncle.” PUKUI ET AL., supra note 49, at 73.

68 WHEELER, supra note 54, at 10.

69 Life In These Islands (last visited Apr. 25, 2009) <http://www.lifeintheseislands.com/2009/01/20/aloha-more-than-a-greeting-a-way-of-life-a-state-law/>

70 Life In These Islands (last visited Apr. 25, 2009) <http://www.lifeintheseislands.com/2009/01/20/aloha-more-than-a-greeting-a-way-of-life-a-state-law/>


B. The Aloha Spirit Codified

“I support the Aloha bill simply because I feel it is a vehicle and a mechanism through which can balance off the human head with the human heart.”

The law of Aloha was codified in 1986. Aunty Pilahi Paki was the author of the now well-known expression of what she felt the Aloha Spirit meant to her and helped to author and pass the Aloha Law, which included her acronym of ALOHA. The Aloha Law reads:

(a) “Aloha Spirit” is the coordination of mind and heart within each person. It brings each person to the self. Each person must think and emote good feelings to others. In the contemplation and presence of the life force, “Aloha”, the following unuhi laulā loa (free translation) may be used:

“Akahai”, meaning kindness to be expressed with tenderness;
“Lōkahā”, meaning unity, to be expressed with harmony;
“‘Olu’olu”, meaning agreeable, to be expressed with pleasantness;
“Ha’aha’a”, meaning humility, to be expressed with modesty;
“Ahonui”, meaning patience, to be expressed with perseverance.

These are traits of character that express the charm, warmth and sincerity of Hawaii’s people. It was the working philosophy of native Hawaiians and was presented as a gift to the people of Hawai‘i. “Aloha” is more than a word of greeting or farewell or a salutation. “Aloha” means mutual regard and affection and extends warmth in caring with no obligation in return. “Aloha” is the essence of relationships in which each person is important to every other person for collective existence. “Aloha” means

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75 Senate Journal, 28th day 324 (Testimony by Representative Kamali‘i) (1959).

76 House Journal, 28th day 334 (Testimony by Representative Kamali‘i) (1986); Life In These Islands (last visited Apr. 25, 2009) <http://www.lifeintheseislands.com/2009/01/20/aloha-more-than-a-greeting-a-way-of-life-a-state-law/>;
to hear what is said, to see what cannot be seen and to know the unknowable.

(b) In exercising their power on behalf of the people and in fulfillment of their responsibilities, obligations and service to the people, the legislature, governor, lieutenant governor, executive officers of each department, the chief justice, associate justices, and judges of the appellate, circuit, and district courts may contemplate and reside with the life force and give consideration to the “Aloha Spirit”.77

The purpose of the bill was to provide that the three branches of government—legislative, executive and judicial—may give consideration to the Aloha Spirit when exercising their respective powers.78 After receiving testimony from the Judiciary, Alu Like, Inc.,79 and several other individuals, the committee agreed that the character traits of kindness, unity, agreeableness, humility and patience accurately expressed the charm, warmth and sincerity of Hawai‘i’s people and their working philosophy.80 Although the Hawaiian Political Action Council of Hawai‘i testified against the bill claiming that it infringed upon religious freedom, the committee believed that it was important that the law be enacted as a public policy.81 Moreover, the committee believed that its guiding

77 HAW. REV. STAT. § 5-7.5 (1986) (italics, kahakō (macron), and ‘okina (glottal stop) added) (translation of “unuhi laulā loa” added in parenthesis).

In this context, the Hawaiian-English translation of unuhi is “To translate, interpret”; laulā is “liberal”; loa is “very, very much”. PUKUI ET AL., supra note 49, at 77, 83 and 140.


80 See supra, note 78.

81 See supra, note 78.
principles were especially relevant to decision-making by all three branches of
government in order to perpetuate the Aloha Spirit for future generations.82

In light of the above, the state legislature would be in perfect alignment
with public policy and the spirit of the law by not reinstating capital punishment
in Hawai‘i. The fruits of the Aloha Spirit—kindness, unity, agreeableness,
humility, and patience—arguably do not align with the spirit of retribution,
resentment and retaliation, which are characteristic of arguments in support of the
death penalty.

C. The Aloha Law In Action

In 2006, as part of a community wide character development curriculum,
Lieutenant Governor Duke Aiona83 and the Hawai‘i Department of Education launched a
program of positive thinking called the Power of Aloha, and handed out Aloha Cards to
students in the state.84 It imparts the values of that Aloha stands for and provides a
compass to see if you are really practicing it.85 As of 2006, 30,000 cards were handed out
to ten schools and to business organizations, and 60,000 more were in print. One side of

82 See supra, note 78.

83 Republican, elected to public office in in 2002 as Hawai‘i’s 11th Lieutenant Governor. See http://hawaii.gov/ltgov/lg (last visited Apr. 26, 2009).


the card was imprinted with positive traits characteristic of the Aloha Spirit, and the reverse side of the card was imprinted with negative traits characteristic of misery.\textsuperscript{86}

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This author argues that at the core of capital execution lies the seed of unforgiveness, which brings forth the fruit of disunity that ripens into bitterness. In contrast, at the core of extending life imprisonment with or without parole to an offender instead of execution lies the seed of forgiveness, which brings forth the fruit of unity that ripens into joy. Forgiveness is the way of the Aloha Spirit.

IV. THE DEATH PENALTY OF MODERN HAWAII WAS UNSUCCESSFUL

“I am opposed to the death penalty because I believe it will be inflicted on the poor, the ignorant, and the most depressed segment of our society and not on the more affluent who may also be guilty of the act of murder.”

A. Ancient Hawaii: An Historical Perspective on Capital Punishment

In 1819, after the death of Kamehameha II, Queen Ka‘ahumanu was the most powerful ali‘i (chief). She was the favorite wife of Kamehameha II and used her position as kuhina nui (Premier) and her family’s political power to create revolutionary changes. Immediately upon Kamehameha II’s death, she instigated the breaking of the kapu system. People who broke the kapu were severely punished. For example, “stealing the king’s property, putting the hand upon his shoulder and breaking the kapus were punishable by death—the offender was strangled.” Chiefs and priests made

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87 The period from 1898 to 1957, when Hawai‘i was still a Territory. Not ancient Hawai‘i.


90 Hawai‘i Judiciary Center.

91 “Taboo, prohibition; special privilege or exemption from ordinary taboo; sacredness; forbidden; sacred, holy, consecrated.” PUKUI ET AL., supra note 49, at 53.

92 LEVIN, supra note 89, at 402.

93 See supra note 90.

94 See supra note 90. (Quote of Chiefess Opi‘ia of Kamehameha’s time; Levi Chamberlin Journal, October 4, 1827).
judicial decisions in ancient Hawai‘i; there was no separate judicial system. After being converted to Christianity by American Protestant missionaries, Queen Ka‘ahumanu made new laws based on the Bible, and adopted legal forms. In 1827, King Kauikeouli (Kamehameha III) proclaimed the first national law and penal code. Murder was prohibited for foreigners and natives, and the penalty for murder was death by hanging.

A Declaration of Rights in 1839 was followed in 1840 by the Kingdom of Hawai‘i’s first Constitution. Authorization to resolve conflicts passed from chiefs and priests to judges schooled in Western jurisprudence. Queen Ka‘ahumanu selected the first jury, presided over the first Western trial, and appointed the first judicial officer.

The old Hawaiian Government created its own form of jury: If both sides in the dispute were Hawaiians, all twelve jurors were Hawaiian; if one side was Hawaiian and one a foreigner, the jury would be six Hawaiians and six haole (foreigners); if both sides were foreigners, all twelve jurors would be foreign.

B. Why Hawaii Abolished The Death Penalty

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95 See supra note 90.
96 See supra note 90.
97 See supra note 90.
98 See supra note 90.
99 See supra note 90.
100 See supra note 90.
101 See supra note 90.
102 See supra note 90.
Before abolishment in 1957, murder in the first degree\textsuperscript{103} was punishable either by death or life imprisonment at hard labor without the possibility of parole.\textsuperscript{104} Juries were afforded statutory discretion to impose the death penalty or sentence the offender to life imprisonment without the possibility of parole.\textsuperscript{105} At the time, the method of execution was by hanging.\textsuperscript{106}

The final passing vote abolishing the bill was 18-10.\textsuperscript{107} The official legislative reasons for abolishment were that the trend toward abolishment was reflected in the fact that only a small percentage of persons who commit murder are actually executed and that capital punishment as applied failed as a deterrent.\textsuperscript{108} It was also noted that six states at the time—Maine, Michigan, Minnesota, North Dakota, Rhode Island and Wisconsin—and the Commonwealth of Puerto Rico were non-death penalty jurisdictions.\textsuperscript{109}

C. Harriet Bouslog

\textsuperscript{103} “Murder is the killing of any human being with malice aforethought, without authority, justification or extenuation by law, and is of two degrees, the first and second, which shall be found by the jury.” Rev. Laws of Haw. § 291-1 (1955) (Murder defined); “Murder committed with deliberate premeditated malice aforethought, or in the commission of or attempt to commit any crime punishable with death, or committed with extreme atrocity or cruelty, is murder in the first degree. Murder not appearing to be in the first degree is murder in the second degree.” Rev. Laws of Haw. § 291-5 (1955) (Degrees defined).

\textsuperscript{104} “Whoever is guilty of murder in the first degree shall be punished by death, or imprisoned at hard labor for life not subject to parole, at the discretion of the jury trying the same.” Rev. Laws of Haw. § 291-5 (1955).

\textsuperscript{105} See supra note 104.


\textsuperscript{107} House Journal, 63rd day 570 (1957)

\textsuperscript{108} House Journal, Judiciary Committee Standing Committee Report 418 on H.B. 706 752 (1957).

\textsuperscript{109} See supra note 108.
Many from the era preceding abolishment credit Harriet Bouslog\textsuperscript{110} and her defense of the famous case of Palakiko v. Harper\textsuperscript{111} as being instrumental in the abolishment of the death penalty in Hawai‘i.\textsuperscript{112} Bouslog, one of only a handful of women lawyers when she was admitted to the Hawai‘i bar in 1941\textsuperscript{113}, was the first woman labor and civil rights attorney in Hawai‘i, defended two nineteen-year-old poorly educated Hawaiians from broken homes in a capital punishment case.\textsuperscript{114} In 1948, the two young


Bouslog was an activist lawyer—feisty, flamboyant, confident, friendly, proud, and physically attractive—and a champion of the underdog. She was born in 1912 in the Midwest and was raised by conservative parents who were schoolteachers and members of the Republican party. Her parents raised her to value hard work and education. She excelled in school and showed particular skill in writing. In 1936, she married an aspiring English Professor, Charles Bouslog, and moved to Hawai‘i where Charles became an English instructor at the University of Hawai‘i. Harriet worked as a secretary at an established law firm while studying for the Hawai‘i bar, and passed the bar in 1941. She turned down an offer to stay with the firm she was at, telling the partners she wanted to help the “little people.” In 1942, during the war, she moved to Washington, D.C. and worked for the National War Labor Board and worked with well-known labor leader Harry Bridges and the west coast ILWU. In 1946, the local Hawai‘i ILWU led its first successful strike against the powerful sugar companies. Because the sugar companies were so powerful (aka: The Big Five), no lawyer would come for the to defend the hundreds of laborers who were arrested during the strike. Harry Bridges asked Harriet to defend them. At first she resisted, saying that she was neither a criminal or trial lawyer. She finally acquiesced and moved back to Hawai‘i in 1946. After a long and successful career here in Hawai‘i, she died in 1998 at the age of 85. \textit{See infra} note 112, at 148-154 (1992); \textit{See Mike Gordon, Harriet Bouslog, THE HONOLULU ADVERTISER, July 2, 2006, available at http://the.honoululuadvertiser.com/150/sesq3bouslog} (last visited Apr. 25, 2009).


\textsuperscript{114} MATSUDA, supra note 112, at 156.
men, John Palakiko and James Majors, were serving time for petty theft. Together they escaped from a prison work crew, reportedly made their way to Nuuanu in search of food, and bound and gagged Theresa Wilder, a white society woman who then suffocated and died.\textsuperscript{115} Rape was alleged, but disputed.\textsuperscript{116} The belief at the time among Hawaiians and laborers was that two Hawaiians charged with murdering a white society woman didn’t have a chance for a fair sentence.\textsuperscript{117} Both received the death penalty.\textsuperscript{118}

Ms. Bouslog, through her relentless efforts, was able to obtain a stay-of-execution at the 11th hour as both prisoners were literally being led to the gallows.\textsuperscript{119} After several rejected appeals from the higher courts, Bouslog was successful in getting their sentences commuted by then-governor John Burns.\textsuperscript{120} Both eventually were paroled, after having their executions stayed five times.\textsuperscript{121} Bouslog, unnerved by the process of repeatedly and narrowly saving her clients from certain death, worked with the International Longshore and Warehouse Union (ILWU) to promote opposition to the death penalty through the new Democratic party platform.\textsuperscript{122} Bouslog testified in later years when reinstatement bills were introduced, stating:

\begin{footnotesize}
\begin{enumerate}
\item MSUDA, supra note 112, at 156.
\item MSUDA, supra note 112, at 156.
\item MSUDA, supra note 112, at 156.
\item MSUDA, supra note 112, at 156.
\item MSUDA, supra note 112, at 156.
\item MSUDA, supra note 112, at 156.
\item MSUDA, supra note 112, at 160.
\item MSUDA, supra note 112, at 160.
\item MSUDA, supra note 112, at 160.
\item MSUDA, supra note 112, at 160.
\item MSUDA, supra note 112, at 160.
\end{enumerate}
\end{footnotesize}
The present advocates of the death penalty referred to the 1957 repeal as if it were a social experiment which failed. Nothing could be further from the truth. It was the revulsion of the people for the miscarriages of justice in the past, injustices which great humanitarians have said always occur when the death penalty exists; as history and records, both in Hawaii and elsewhere, show, it is only the poor, the non-white, the economically underprivileged, who suffer the extreme penalty of death, and not the well-to-do or the professional criminals.”

Actual statistics of 47 death row inmates executed in Hawai‘i between 1897 and 1944 strongly supports Bouslog’s contention that the death penalty was applied disproportionately to the ethnic minority and the poor. Persons of Filipino background represented an extremely disproportionate number of executions at 51%, with only one Caucasian executed in Hawai‘i’s history. The persons of Filipino, Japanese, Korean and Puerto Rican ancestry were likely uneducated, illiterate and unskilled immigrants.

Filipinos were one of the recent waves of immigrants working as contract laborers in the canneries and sugar cane fields, and because they were illiterate they could not understand neither the English language nor the culture. The same theory applies to Japanese and Korean immigrants, who arrived just a few years prior to the Filipinos.

<table>
<thead>
<tr>
<th>Ethnic Background</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caucasian</td>
<td>1</td>
<td>2.1%</td>
</tr>
<tr>
<td>Hawaiian/Part-Hawaiian</td>
<td>3</td>
<td>6.4%</td>
</tr>
<tr>
<td>Filipino</td>
<td>24</td>
<td>51.1%</td>
</tr>
<tr>
<td>Japanese</td>
<td>10</td>
<td>21.3%</td>
</tr>
</tbody>
</table>

123 MATSUDA, supra note 112, at 161.
125 KOSEKI, supra note 106, at 14.
126 CATANGUI ET AL., supra note 124, at 26.
127 KOSEKI, supra note 106, at 12.
Bouslog was an extraordinary woman ahead of her time, who defended—often at no charge—the rights of underdog clients and activist plantation workers employed by the Big Five companies. She embodied and exemplified the Aloha Spirit in both attitude and action by extending warmth, caring, and her sharp legal mind to others in need, without expecting anything in return. As a young lawyer, she championed the cause of the underdogs for what was right, just, and fair, at the expense of being vilified by the local power structure. The 1980 state legislature commended Bouslog by stating that her “service to working people serves as an example to the multitudes of young lawyers today that . . . unpopular causes are well worth the time and effort expended on them.”

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127 Executions in Hawaii, by Ethnic Background (Between 1897 and 1944)

<table>
<thead>
<tr>
<th>Ethnic Background</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Korean</td>
<td>6</td>
<td>12.8%</td>
</tr>
<tr>
<td>Puerto Rican</td>
<td>3</td>
<td>6.4%</td>
</tr>
<tr>
<td>Total</td>
<td>47</td>
<td>100%</td>
</tr>
</tbody>
</table>


The Big Five companies, who trace their roots to the Hawai‘i sugar industry and who dominated Hawai‘i business from the late 1800s to mid 1900s were Alexander and Baldwin, Amfac, Castle & Cooke, C. Brewer, and Hackfeld and Company, which later became known as Theo Davies. For decades they essentially ran Hawai‘i, whether in the political or business arena; major changes did not happen without their blessing. Their influence dissipated at about the time of statehood, with diversification from an agriculturally based economy. See Richard Borreca, Sugar Yields Sweet Deal for Big Five Firms, HONOLULU STAR BULLETIN, July 12, 1999, available at http://archives.starbulletin.com/1999/07/12/millennium/story1.html (last visited Apr. 25, 2009); See Rob Perez, Big Five Companies Were All-Powerful, HONOLULU STAR BULLETIN, July 12, 1999, available at http://archives.starbulletin.com/1999/10/25/news/story5.html (last visited Apr. 25, 2009)

129 MATSUDA, supra note 112, at 148.

130 MATSUDA, supra note 112, at 148.
V. THE DEATH PENALTY ELSEWHERE

“No matter how the State stresses non-violent ways of solving problems, when the State itself takes human life it is teaching the real lesson, that violence is the way. Actions speak louder than words.”

A. The Death Penalty Nationwide

Every state in the nation has at some point in its history carried out capital executions. Now, there are 15 non-death penalty states—Alaska, Hawai‘i, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Mexico, New Jersey, New York, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin—and the District of Columbia. Michigan has the longest standing non-death status, formally abolishing the death penalty in 1846 after obtaining statehood. In December 2007, New Jersey


became the first state in forty years to abolish its death penalty.\textsuperscript{135} On March 18, 2009, New Mexico became the second state in two years to abolish its death penalty.\textsuperscript{136}

Additionally, Illinois has effected a “de jure” moratorium,\textsuperscript{137} which is a temporary halt on executions as a matter of law. In January 2000, then-governor George Ryan declared a statewide moratorium on executions following the exoneration of several innocent death row inmates. After creating a commission to study capital punishment in Illinois, which presented its final recommendations in 2003, former Governor Ryan commuted the sentences of all 167 inmates to life without parole in the same year.\textsuperscript{138} In three instances he commuted the sentences from death to 40 years to life to match sentences that were handed down to co-defendants in these cases.\textsuperscript{139}

The remaining 35 states, the U.S. Military, and the Federal Government have valid death penalty statutes on the books, and are either active jurisdictions with no legal impediments to executions jurisdiction-wide, or inactive jurisdictions with de facto moratoria that may or may not be resolved with the April 2008 \textit{Baze v. Rees} decision


\textsuperscript{136} \textit{Amnesty International} (last visited Apr. 26, 2009) <http://www.amnestyusa.org/death-penalty/page.do?id=1011005>


upholding Kentucky’s lethal injection method of execution as constitutional.\textsuperscript{140} Collectively, these jurisdictions have a total of 3,291 inmates on death row.\textsuperscript{141} Although California leads the nation with the highest number of death row inmates at 667,\textsuperscript{142} Texas, with 373 death row inmates, still leads the nation with 50\% of the executions.\textsuperscript{143} The explanation for this is likely that Texas’ appeals process takes 10 years, which is the shortest among the states.\textsuperscript{144}

i. The U.S. Death Penalty Is In Historic Decline

“Man is distinguished from other animals in that he knows he must die. Civilized man is distinguished by his capacity to value life.”\textsuperscript{145}

\textsuperscript{140} See American Bar Association, \textit{Death Penalty Moratorium Implementation Project} (last visited Feb. 1, 2009) \url{http://www.abanet.org/moratorium/states/status.html}.

\textsuperscript{141} Number of People on Death Row: Alabama 203, Arizona 126, Arkansas 40, California 667, Colorado 2, Connecticut 9, Delaware 19, Florida 397, Georgia 107, Idaho 18, Indiana 19, Kansas 9, Kentucky 39, Louisiana 88, Maryland 6, Minnesota 64, Missouri 48, Montana 2, Nebraska 10, Nevada 77, New Hampshire 1, New Mexico 2, North Carolina 173, Ohio 179, Oklahoma 85, Oregon 35, Pennsylvania 228, South Carolina 63, South Dakota 3, Tennessee 102, Texas 373, Utah 9, Virginia 21, Washington 9, Wyoming 1, Military 6, and Federal 51. See American Bar Association, \textit{Death Penalty Moratorium Implementation Project} (last visited Feb. 1, 2009) \url{http://www.abanet.org/moratorium/states/status.html}.

\textsuperscript{142} See American Bar Association, \textit{Death Penalty Moratorium Implementation Project} (last visited Feb. 1, 2009) \url{http://www.abanet.org/moratorium/states/status.html}.


a. An Unlikely And Dramatic Change In Public Policy

The use of the death penalty is in historic decline.146 From the beginning of the “golden age” of the death penalty beginning in 1976 through the 1990’s, the death penalty was seen and accepted as a normal part of American political life.147 Reflecting a steady increase over a thirty-five-year period, public opinion supporting capital punishment was around 80% in favor of capital punishment for murderers, with less than 20% of Americans opposed.148 However, in the mid-1990s, the trend reversed, and by 2005 and 2006, the number of death sentences dropped to 128 and 114, respectively.149 Executions peaked in 1999, with 98 executions that year, the highest since 1976; then executions started in a steady decline.150 Public opinion shifted from higher support for the death penalty to slightly higher support for life without the possibility of parole as the appropriate punishment for first-degree murder.151

Use of the Death Penalty in the United States152


148 BAUMGARTNER ET AL., supra note 146, at 7.


<table>
<thead>
<tr>
<th>Death Penalty Statistics</th>
<th>2006</th>
<th>2005</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executions</td>
<td>53</td>
<td>60</td>
<td>98</td>
</tr>
<tr>
<td>Death Sentences</td>
<td>114</td>
<td>128</td>
<td>283</td>
</tr>
<tr>
<td>Death Row population</td>
<td>3,366</td>
<td>3,415</td>
<td>3,625</td>
</tr>
<tr>
<td>(as of July 1)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Opinion (Gallup</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poll): What is the</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>appropriate punishment</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>for first-degree</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>murder?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Life Without Parole</td>
<td>48%</td>
<td>39%</td>
<td>38%</td>
</tr>
<tr>
<td>Death Penalty</td>
<td>47%</td>
<td>56%</td>
<td>56%</td>
</tr>
</tbody>
</table>

One explanation given for this dramatic shift in public policy is the focus of attention to the innocence argument and the informative role of the media.\(^{153}\) The innocence argument has changed the public’s perception of our criminal justice system and in turn has transformed public policy.\(^{154}\) As of February 2008, at least 128 condemned prisoners have been exonerated and released since 1973. During the same period, 1099 people have been executed. Thus, nationally, approximately one innocent person has been exonerated for every 8 executed, representing a staggering 12.5% of those executed.\(^{155}\)

b. **Even Texas Executions Are In Decline**

Texas is the state annual leader in executions and sets the standard in terms of the number of executions.\(^{156}\) As of 2008, Texas carried out more than 400 executions since

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\(^{154}\) BAUMGARTNER ET AL., *supra* note 146, at 7.

\(^{155}\) MELLO, *supra* note 5, at 832.

Texas’ notoriety in the regularity and record number of executions has garnered them worldwide attention. Yet, only ten men and one woman were sentenced to death least year, the lowest number since the death penalty was reinstated in 1976. Robert Hirschorn, a nationally known Texas attorney and jury consultant, contends that the change has occurred because “[t]he need for revenge, for vengeance is being curbed, the appetite is no longer there.”

C. The Death Penalty In Other Countries

Since the 1970s, the death penalty in other countries has been on a sharp declining trend, with dozens of countries outlawing capital punishment. In 1977, only sixteen countries had abolished the death penalty for all crimes. As of December 2008, ninety-two countries have abolished the death penalty, either in law or in practice, which is more than two-thirds of the countries in the world. In the past decade, an average of over

157 MELLO, supra note 5, at 801.


161 BAUMGARTNER ET AL., supra note 146, at 25.


three countries per year have abolished the death penalty in law or, having done so for ordinary offenses, have gone on to abolish it for all offenses.¹⁶⁴

Ninety-two countries have abolished the death penalty for all crimes. These countries do not provide for the death penalty for any crime: Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bosnia-Herzegovina, Bulgaria, Cambodia, Canada, Cape Verde, Colombia, Cook Islands, Costa Rica, Cote D'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, Ireland, Italy, Kiribati, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Montenegro, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niue, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Rwanda, Samoa, San Marino, Sao Tome And Principe, Senegal, Serbia (including Kosovo), Seychelles, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sweden, Switzerland, Timor-Leste, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uruguay, Uzbekistan, Vanuatu, and Venezuela.¹⁶⁵

Ten countries have abolished the death penalty for ordinary crimes only. These countries provide for death penalty only for exceptional crimes—crimes under military


law or crimes committed under exceptional circumstances: Bolivia, Brazil, Chile, El Salvador, Fiji, Israel, Kazakstan, Kyrgyzstan, Latvia, and Peru.\textsuperscript{166}

Thirty-six countries have abolished the death penalty in practice. These countries retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice because they have not executed anyone during the past ten years and are believed to have a policy or established practice of not carrying out executions: Algeria, Benin, Brunei, Burkina Faso, Cameroon, Central African Republic, Congo (Republic of), Eritrea, Gabon, Gambia, Ghana, Grenada, Kenya, Laos, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Morocco, Myanmar, Nauru, Niger, Papua New Guinea, Russian Federation, South Korea, Sri Lanka, Suriname, Swaziland, Tajikistan, Tanzania, Togo, Tonga, Tunisia, and Zambia.\textsuperscript{167}

Fifty-nine countries and territories still retain the death penalty for ordinary crimes such as murder: Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Burundi, Chad, China, Comoros, Democratic Republic of Congo, Cuba, Dominica, Egypt, Equatorial Guinea, Ethiopia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Mongolia, Nigeria, North Korea, Oman, Pakistan, Palestinian Authority, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Sierra Leone, Singapore, Somalia, Sudan, Syria, Taiwan,

\textsuperscript{166} Amnesty International (last visited Apr. 25, 2009) \texttt{<http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>}

\textsuperscript{167} Amnesty International (last visited Apr. 25, 2009) \texttt{<http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>} (The Russian Federation introduced a moratorium on executions in August 1996. However, executions were carried out between 1996 and 1999 in the Chechen Republic).
Thailand, Trinidad And Tobago, Uganda, United Arab Emirates, United States Of America, Viet Nam, Yemen, and Zimbabwe.\(^{168}\)

Hawaii, as an early abolitionist state, was way ahead of its time. In comparison, the United States as a nation is among the one-third minority of countries still clinging to the death penalty.

VI. THE DEATH PENALTY IN HAWAI‘I WOULD STILL NOT BE SUCCESSFUL TODAY

“We already have laws which can fully punish and control murderers. For the most serious murder we can sentence the person to life in prison without parole. . . . A civilized society needs no harsher punishment.”\(^{169}\)

A. Hawai‘i Legislative History On Capital Punishment After Abolishment

Capital punishment bills have been introduced repeatedly nearly\(^{170}\) every biennium legislative session\(^{171}\) since its abolishment in 1957. The current 25th legislative


\(^{171}\) Biennium Legislative Session: 1961-62 SB 191, HB 141, HB 647 (all bills died in committee after first reading); 1971-72 SB 439, HB 653 (all bills died in committee after first reading); 1973-74 SB 206, SB 712, HB 689, HB 2334 (all bills died in committee after first reading); 1975-76 SB 163, HB 1252 (all bills died in committee after first reading); 1977-78 SB 184, SB 392, HB 324, HB 402, HB 1753, HB 3077 (all bills died in committee after first reading, except SB 184 which was heard in public hearings and passed the Senate, but died in the House); 1979-80 SB 269, SB 376, HB 248, HB 251 (all bills died in committee after first reading); 1981-82 SB 4, SB 9, SB 125, HB 539 (all bills died in committee after first reading, except SB 4, which passed the Senate, but died in the House); 1983-84 HB 00076, HB 0386, HB 0432, HB 2259, SB 0058, SB 0396, SB 0422, SB 1155, SB 1197, SB 2083 (all bills died in committee after first reading; except SB 0058, which failed to pass Senate third reading); 1985-86 HB 0411, HB 0607, HB 0621, HB 0678, HB 1600, HB 1642, HB 2420, HB 2642, HB 2654, SB 0233, SB 0285, SB 0812, SB 0848, HR 0278 (all bills died in committee; HR 0278 was a resolution requesting a
session is no exception. The death penalty debate in Hawai‘i has been continuous over the past five decades, with bills mostly dying in the committees to which they have been assigned without ever passing the first reading or ever having the opportunity for a public hearing. However, there are four notable and exceptional years: 1977 (Senate Bill 184)—the only year a public hearing was held to allow anti- and pro-death individuals and organizations to be heard—there were 94 registered speakers and more than six hours of often impassioned testimony172—the bill passed the Senate but the bill subsequently died in the House Judiciary Committee after it was shelved173; 1981 (Senate Bill 4, Senate Draft 2)—passed the Senate again174, but died in the House; 1983 (Senate Bill


173 Gregg Kakesako, Some Legislators Resent Garcia’s Death Bill Decision, HONOLULU STAR BULLETIN, March 21, 1977. A unilateral decision to shelve the bill was made by then House Judiciary Committee chairman Representative Richard Garcia stirring controversy in the State House. Garcia said that he personally takes responsibility for shelving the bill, and told a reporter that he had conferred with the 14 members of his committee and they concurred with his decision. However, several members expressed disbelief that he would kill the bill without first informing them or holding a public hearing.

58)—failed to pass Senate third reading by roll call vote\textsuperscript{175}; and 1987 (Senate Bill 220, Senate Draft 1)—passed second reading\textsuperscript{176}, was recommitted to the Senate Judiciary Committee where it was reported out\textsuperscript{177}, but then the bill was deferred and was recommitted\textsuperscript{178} to the committee again where the bill died.

Since 2003, Senator Sam Slom has introduced capital punishment bills every biennium legislative session.\textsuperscript{179} His bills are narrowly focused on crimes only involving the murders of sexually assaulted minors. Although he claims that his introduction of death penalty bills was not prompted by a particular case,\textsuperscript{180} it is interesting to note that his original bill in 2003 coincided with the murder of 11-year old Kahealani Indreginal.\textsuperscript{181} This seems to support this author’s contention that legislators at times will draft bills that

\textsuperscript{175} Senate Journal, 35th Day 424 (1983). Roll call vote 9 ayes, 16 noes, failing to pass third reading.


\textsuperscript{177} Senate Journal, Standing Committee Report 1918, 847 (1988), recommending that SB 220, SD 1 pass third reading.


\textsuperscript{180} Interview with Senator Slam Slom, at the Hawai‘i State Capitol (Mar. 5, 2009).

\textsuperscript{181} Editorial, Hawai‘i Must Say No to the Death Penalty, THE HONOLULU ADVERTISER, January 11, 2003, at A6, suggesting State Senator Willie Espero’s intent to introduce a capital punishment bill relied on the “heat of recent community outrage to propel his bill.” He proposed to (and subsequently did) submit bills SB404 and SB405, which would impose the death penalty on a criminal who sexually assaults and murders a minor. He proposed the bills because of the then recent murder of 11-year old Kahealani Indreginal, which shocked and outraged the local community. Sexual assault apparently was not an issue in the case and the punishment could not apply retroactively to Kahealani’s murderer.
do not necessarily reflect a rational-thinking public, but instead community outrage that is usually short-lived.\textsuperscript{182}

\textbf{B. The Death Penalty In Hawaii Would Not Be A Deterrence}

“The execution of Jesus by crucifixion and feeding his followers to the lions did not eliminate or even deter the ‘crime’ of practicing Christianity.”\textsuperscript{183} “The principle that our duplicating a criminal offense will reduce the number of times it’s committed is illogical; already, one death has been changed to two; a one hundred percent increase in loss of life (even if it is done with the State’s rubber stamp).”\textsuperscript{184}

One reason why Hawai’i legislators abolished the death penalty was because they found that it fails as a deterrent. For decades, researchers have reached conflicting conclusions about whether capital punishment actually deters crime.\textsuperscript{185} Some modern economics papers find evidence of deterrence.\textsuperscript{186} However, in contrast, most of the

\textsuperscript{182} Editorial, \textit{Hawai’i Must Say No to the Death Penalty}, THE HONOLULU ADVERTISER, January 11, 2003, at A6, suggesting State Senator Willie Espero’s intent to introduce a capital punishment bill relied on the “heat of recent community outrage to propel his bill.” He proposed to (and subsequently did) submit bills SB404 and SB405, which would impose the death penalty on a criminal who sexually assaults and murders a minor. He proposed the bills because of the then recent murder of 11-year old Kahealani Indreginal, which shocked and outraged the local community. Sexual assault apparently was not an issue in the case and the punishment could not apply retroactively to Kahealani’s murderer.


\textsuperscript{186} Economists theorized in early literature on capital punishment that potential criminals would reduce their criminal activity if the expected costs (or punishments) to them of their criminal behavior increased because of increased penalties. \textit{See} SHEPHERD, \textit{supra} note 185, at 214.
sociology and criminologist studies find no deterrence, as does modern empirical papers published in law reviews.\(^{187}\) So why the difference? One theory is that the conflicting conclusions can be reconciled if the capital punishment’s impact on the murder rate differs among jurisdictions.\(^{188}\) This could be attributed to the vast differences in the application of the death penalty across states.\(^{189}\) Among some of the differences: states define capital crimes in a wide variety of ways, impose capital sentences at differing frequencies, impose executions at differing frequencies, differ in methods of execution and differ in how much publicity their executions receive.\(^{190}\)

These differences might affect the deterrent impact of each of these states.\(^{191}\) In other words, *it depends*. The author of this theory, Joanna M. Sheperd, using an empirical and data model accepted in a leading peer-reviewed journal, concludes three things: (1) If deterrence is the objective, then capital punishment generally succeeds in the few states with many executions, (2) the many states with not many executions may not be deterring crime, but instead inducing murders, and (3) to achieve deterrence, states must generally execute many people.\(^{192}\) Hawai‘i would certainly not be a state that would be executing “many” people. In 2005 and 2006, there were 24 and 21 murders in

\(^{187}\) SHEPHERD, *supra* note 185, at 218-219.

\(^{188}\) SHEPHERD, *supra* note 185, at 220.

\(^{189}\) SHEPHERD, *supra* note 185, at220.

\(^{190}\) SHEPHERD, *supra* note 185, at 220.

\(^{191}\) SHEPHERD, *supra* note 185, at 220.

\(^{192}\) SHEPHERD, *supra* note 185, at 248.
Hawaii, respectively, as compared to Texas, with 1,407 and 1,384, respectively.\textsuperscript{193} As such, based on Sheperd’s theory, Hawai‘i would not be a deterrent state.

**C. The Murder Rate In Hawaii Is Among The Lowest In The Nation**

California, Florida, and Texas tout the highest number of death row inmates at 667, 397, and 373, respectively.\textsuperscript{194} One reason is because they have much larger total populations than most states.\textsuperscript{195} However, closer scrutiny of crime statistics show that these three states still have higher per capita murder/non-negligent manslaughter rates than 13 out of the 15 non-death penalty states. Michigan and New Mexico are the only non-death states with a slightly higher per capita murder rate. Additionally, the three states have higher per capita rates than the national average of 5.6 and 5.7 for 2005 and 2006, respectively, with the exception of Florida in 2005.

Significantly, Hawai‘i is well below the national per capita murder/nonnegligent manslaughter rate at 1.9 and 1.6 for 2005 and 2006, respectively, and has one of the lowest rates in then nation. In 2005, only five states—lIowa, South Dakota, Vermont, Maine, and New Hampshire—had lower per capita rates than Hawai‘i. In 2006, only three states—New Hampshire, North Dakota, and South Dakota—had lower per capita rates than Hawai‘i.

\textsuperscript{193} Crime In The United States 32-38 (2d ed. 2008).


\textsuperscript{195} See supra note 193.
Murder and Nonnegligent Manslaughter, by State, 2005\textsuperscript{196}

Ranked from Lowest to Highest Per Capita Rate

* Non-Death State

<table>
<thead>
<tr>
<th>Area</th>
<th>Population</th>
<th>Number</th>
<th>Rate (per 100,000 population, percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. National Average</td>
<td>296,507,061</td>
<td>16,740</td>
<td>5.6</td>
</tr>
<tr>
<td>Iowa*</td>
<td>2,965,524</td>
<td>40</td>
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<tr>
<td>South Dakota</td>
<td>774,883</td>
<td>18</td>
<td>1.3</td>
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<tr>
<td>Vermont*</td>
<td>622,387</td>
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<td>1.3</td>
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<tr>
<td>Maine*</td>
<td>1,318,220</td>
<td>19</td>
<td>1.4</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>1,306,819</td>
<td>19</td>
<td>1.5</td>
</tr>
<tr>
<td>Hawai‘i*</td>
<td>1,273,278</td>
<td>24</td>
<td>1.9</td>
</tr>
<tr>
<td>Montana</td>
<td>934,737</td>
<td>18</td>
<td>1.9</td>
</tr>
<tr>
<td>North Dakota*</td>
<td>634,605</td>
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<td>Minnesota*</td>
<td>5,126,739</td>
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<tr>
<td>Oregon</td>
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<td>Utah</td>
<td>2,490,334</td>
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<td>2.2</td>
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<tr>
<td>Idaho</td>
<td>1,429,367</td>
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<td>2.4</td>
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<tr>
<td>Nebraska</td>
<td>1,758,163</td>
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<td>Massachusetts*</td>
<td>6,443,367</td>
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<tr>
<td>Wyoming</td>
<td>508,798</td>
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<td>Connecticut</td>
<td>3,500,701</td>
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<td>1,073,579</td>
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<td>3.3</td>
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<td>Delaware</td>
<td>841,741</td>
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<td>New York*</td>
<td>19,315,721</td>
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<tr>
<td>West Virginia*</td>
<td>1,814,083</td>
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<tr>
<td>Kentucky</td>
<td>4,172,608</td>
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<td>4.6</td>
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<tr>
<td>Alaska*</td>
<td>663,253</td>
<td>32</td>
<td>4.8</td>
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<tr>
<td>New Jersey* (abolished 2007)</td>
<td>8,703,150</td>
<td>417</td>
<td>4.8</td>
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<tr>
<td>Florida</td>
<td>17,768,191</td>
<td>883</td>
<td>5.0</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,470,685</td>
<td>590</td>
<td>5.1</td>
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<tr>
<td>Oklahoma</td>
<td>3,543,442</td>
<td>187</td>
<td>5.3</td>
</tr>
</tbody>
</table>

\textsuperscript{196} Excerpted from CRIME IN THE UNITED STATES 12, 32-38 (2d ed. 2008). Murder and nonnegligent manslaughter is defined as the willful (nonnegligent) killing of one human being by another.
### Murder and Nonnegligent Manslaughter, by State, 2005

**Ranked from Lowest to Highest Per Capita Rate**

* Non-Death State

<table>
<thead>
<tr>
<th>Area</th>
<th>Population</th>
<th>Number</th>
<th>Rate (per 100,000 population, percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana</td>
<td>6,266,019</td>
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<td>5.7</td>
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<td>12,765,427</td>
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<tr>
<td>Pennsylvania</td>
<td>12,405,348</td>
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<tr>
<td>Texas</td>
<td>22,928,508</td>
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<td>6.1</td>
</tr>
<tr>
<td>Virginia</td>
<td>7,564,327</td>
<td>458</td>
<td>6.1</td>
</tr>
<tr>
<td>Georgia</td>
<td>9,132,553</td>
<td>564</td>
<td>6.2</td>
</tr>
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<td>10,100,833</td>
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<td>6.2</td>
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<td>North Carolina</td>
<td>8,672,459</td>
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<td>6.7</td>
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<td>Arkansas</td>
<td>2,775,708</td>
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<td>6.8</td>
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<tr>
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<td>2,503</td>
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<td>Arizona</td>
<td>5,953,007</td>
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<tr>
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<td>Louisiana</td>
<td>4,507,331</td>
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<td>District of Columbia</td>
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<td>33.5</td>
</tr>
</tbody>
</table>

### Murder and Nonnegligent Manslaughter, by State, 2006

(Ranked from Lowest to Highest Per Capita Rate)

* Non-Death States

<table>
<thead>
<tr>
<th>Area</th>
<th>Population</th>
<th>Number</th>
<th>Rate (per 100,000 population, percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. (Nat’l) Total</td>
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<td>New Hampshire</td>
<td>1,314,895</td>
<td>13</td>
<td>1.0</td>
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</tbody>
</table>

---

196 Excerpted from CRIME IN THE UNITED STATES 12, 32-38 (2d ed. 2008). Murder and nonnegligent manslaughter is defined as the willful (nonnegligent) killing of one human being by another.
<table>
<thead>
<tr>
<th>Area</th>
<th>Population</th>
<th>Number</th>
<th>Rate (per 100,000 population, percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Dakota</td>
<td>781,919</td>
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<td>1.2</td>
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<td>North Dakota*</td>
<td>635,867</td>
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<td>1.3</td>
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<td>Hawai‘i*</td>
<td>1,285,498</td>
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<td>Maine*</td>
<td>1,321,574</td>
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<td>1.7</td>
</tr>
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<td>Wyoming</td>
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<td>1.7</td>
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<tr>
<td>Iowa*</td>
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<tr>
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<td>623,908</td>
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<tr>
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<td>Nebraska</td>
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<td>Connecticut</td>
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<td>3.1</td>
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<td>Colorado</td>
<td>4,753,377</td>
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<tr>
<td>Kentucky</td>
<td>4,206,074</td>
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<td>4.0</td>
</tr>
<tr>
<td>West Virginia*</td>
<td>1,818,470</td>
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<td>4.1</td>
</tr>
<tr>
<td>Kansas</td>
<td>2,764,075</td>
<td>127</td>
<td>4.6</td>
</tr>
<tr>
<td>Ohio</td>
<td>11,478,006</td>
<td>539</td>
<td>4.7</td>
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<td>New York*</td>
<td>19,306,183</td>
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<td>4.8</td>
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<tr>
<td>Delaware</td>
<td>853,476</td>
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<td>4.9</td>
</tr>
<tr>
<td>New Jersey* (abolished in 2007)</td>
<td>8,724,560</td>
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<tr>
<td>Virginia</td>
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<td>5.4</td>
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<tr>
<td>Indiana</td>
<td>6,313,520</td>
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<td>5.8</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3,579,212</td>
<td>207</td>
<td>5.8</td>
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<tr>
<td>Pennsylvania</td>
<td>12,440,621</td>
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<tr>
<td>Texas</td>
<td>23,507,783</td>
<td>1,384</td>
<td>5.9</td>
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<tr>
<td>Illinois</td>
<td>12,831,907</td>
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<td>North Carolina</td>
<td>8,856,505</td>
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<tr>
<td>Florida</td>
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<tr>
<td>Missouri</td>
<td>5,842,713</td>
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</tr>
<tr>
<td>Georgia</td>
<td>9,363,941</td>
<td>600</td>
<td>6.4</td>
</tr>
</tbody>
</table>
### Murder and Nonnegligent Manslaughter, by State, 2006\(^{197}\)

(Ranked from Lowest to Highest Per Capita Rate)

* Non-Death States

<table>
<thead>
<tr>
<th>Area</th>
<th>Population</th>
<th>Number</th>
<th>Rate (per 100,000 population, percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>36,457,549</td>
<td>2,485</td>
<td>6.8</td>
</tr>
<tr>
<td>New Mexico* (abolished March 2009)</td>
<td>1,954,599</td>
<td>132</td>
<td>6.8</td>
</tr>
<tr>
<td>Tennessee</td>
<td>6,038,803</td>
<td>409</td>
<td>6.8</td>
</tr>
<tr>
<td>Michigan*</td>
<td>10,095,643</td>
<td>713</td>
<td>7.1</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2,810,872</td>
<td>205</td>
<td>7.3</td>
</tr>
<tr>
<td>Arizona</td>
<td>6,166,318</td>
<td>465</td>
<td>7.5</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2,910,540</td>
<td>223</td>
<td>7.7</td>
</tr>
<tr>
<td>Alabama</td>
<td>4,599,030</td>
<td>382</td>
<td>8.3</td>
</tr>
<tr>
<td>South Carolina</td>
<td>4,321,249</td>
<td>359</td>
<td>8.3</td>
</tr>
<tr>
<td>Nevada</td>
<td>2,495,529</td>
<td>224</td>
<td>9.0</td>
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<tr>
<td>Maryland</td>
<td>5,615,727</td>
<td>546</td>
<td>9.7</td>
</tr>
<tr>
<td>Louisiana</td>
<td>4,287,768</td>
<td>530</td>
<td>12.4</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>581,530</td>
<td>169</td>
<td>29.1</td>
</tr>
</tbody>
</table>

If capital punishment was truly an effective deterrent in reducing the murder rate, then states with the most active death penalty programs and executions (i.e. Texas) should be the states with the lowest per capita murders. However, recent statistics do not support this conclusion.

### D. State-Sanctioned Killing Is Expensive

Proponents argue that executing an offender saves us the cost of providing room and board in a maximum-security prison for the rest of the offender’s life. However, the death penalty is surprisingly much more expensive than life imprisonment.\(^{198}\) Research on the cost of pursuing the death penalty has consistently shown that a capital case costs...

\(^{198}\) Streib, supra note 4, at 24.
at least twice as much as convicting and housing that same convicted murderer for life in a high security prison.  

California would save more than $125 million each year if it replaced the death penalty with a sentence of permanent imprisonment. In Florida, the cost of each execution was about $3.2 million, about six times the amount needed to incarcerate a convicted murderer for life. Kansas reported that capital cases are 70% more expensive than comparable non-death cases. In Texas the cost of capital punishment is about $2.3 million per death sentence, three times the cost of imprisoning a convicted murderer at the highest possible security level in a single prisoner cell for forty years.

It would be wholly fiscally irresponsible for Hawai‘i legislators to reinstate the death penalty today, especially in the face of the current financial crisis and significant budget cuts.

E. The Death Penalty in Hawaii Would Disparately Impact Native Hawaiians and Samoans

“Whether or not the death penalty is imposed discriminatorily, it always appears to discriminate against the most socially disadvantaged groups in a given society. Thus, the penalty, if imposed at all, will inevitably produce social and racial disquiet and acrimony. This has been the history in the United States and in Hawai‘i. It is a predictable result of the passage of capital punishment legislation now.”

199 MELLO, supra note 5, at 851.


201 MELLO, supra note 5, at 851 (as reported by the Death Penalty Information Center).

202 MELLO, supra note 5, at 852 (as reported by the Death Penalty Information Center).

203 MELLO, supra note 5, at 853 (as reported by the Death Penalty Information Center).

Before the death penalty was abolished in Hawai‘i in 1957, persons of Filipino ancestry represented an extremely disproportionate number of executions at 51%. Today, if the death penalty were restored it would disproportionately impact persons of native Hawaiian and Samoan ancestry.

<table>
<thead>
<tr>
<th>Ethn Group or Race</th>
<th>2004 % of prison pop.</th>
<th>2005 % of state popl.</th>
<th>2006 % of prison pop.</th>
<th>2007 % of state popl.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>6</td>
<td>.9</td>
<td>7</td>
<td>.9</td>
</tr>
<tr>
<td>Cauc.</td>
<td>26</td>
<td>26</td>
<td>25</td>
<td>24</td>
</tr>
<tr>
<td>Chinese</td>
<td>.6</td>
<td>4</td>
<td>.6</td>
<td>3</td>
</tr>
<tr>
<td>Filipino</td>
<td>13</td>
<td>11</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Haw‘n- pt Hawn</td>
<td>33</td>
<td>20</td>
<td>34</td>
<td>22</td>
</tr>
<tr>
<td>Japanese</td>
<td>3</td>
<td>18</td>
<td>4</td>
<td>16</td>
</tr>
<tr>
<td>Korean</td>
<td>.3</td>
<td>.7</td>
<td>.3</td>
<td>.6</td>
</tr>
<tr>
<td>Samoan- Tongan</td>
<td>8</td>
<td>.5</td>
<td>8</td>
<td>.8</td>
</tr>
<tr>
<td>Other</td>
<td>10.1</td>
<td>18.9</td>
<td>9.1</td>
<td>20.7</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
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</table>

Samoans-Tongans would experience the highest disproportionate impact if the death penalty were reinstated. For years 2004 through 2007, this group made up on the average one percent of Hawai‘i’s population, but eight percent of the felony population for first and second degree murder combined. Native Hawaiians would experience the second highest disproportionate impact. For years 2004 through 2007, this group made

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205 Excerpted from statistical reports prepared by the Hawai‘i Department of Public Safety Research and Statistics Office and State of Hawai‘i Data Book, for years 2004-2007.
up on the average twenty-two percent of Hawai‘i’s population, but thirty-four percent of the felony population for first and second degree murder combined.

VII. CONCLUSION

The Hawai‘i legislature should not reinstate capital punishment because it does not align with the spirit of Aloha that makes Hawai‘i unique from any other place on this earth, it was not successful in Hawai‘i in the not-too-distant past, death penalty sentencing and executions elsewhere are on a historical decline, and it would not be successful in Hawai‘i today.

This author urges all lawmakers to give serious consideration to preserving Hawai‘i’s reputation as the Aloha State and to avoid impulsive and uninformed judgments supporting the restoration of the death penalty now and in the future. Reinstating capital punishment is a serious and extreme step to take and one that could at the very minimum undermine our state’s economic health and vitality. Tourism, Hawai‘i’s number one industry, could be severely adversely affected by a revival of the death penalty. If perception is everything, then changing our reputation from the Aloha State to the Death State could have dire economic consequences.

Sensible humane public policy should be the guiding principle in decisions impacting Hawai‘i’s penal system. Hawai‘i’s current policy of life imprisonment with or without the possibility of parole ought not to be replaced by an inhumane, barbaric, and uncivil policy. Even though today death does not come by way of hanging or burning at the stake, death by gas or lethal injection is still an inhumane form of punishment, contrary to the opinion of the U. S. Supreme Court. A less barbaric or painful form of punishment does not necessarily make something humane. The execution of any human
being in the name of the state is far less humane than sentencing the offender to life in prison without the possibility of parole.

This author also urges lawmakers, as they contemplate, introduce, and debate new bills, to give consideration to the Aloha Law to help improve and guide their decision-making, as well as to perpetuate the Aloha Spirit so that “future generations will not lose sight of the cultural bonds which hold the “Aloha State” together.”

This song, written by native Hawaiian musician Brother Noland, captures the essence of the Aloha Spirit:

The Aloha Song

I want to tell you how I am feeling
About this wonderful place we call Hawai‘i
I want to tell you how I am feeling
About this magical place
It’s for you and me

There are so many places I’ve been
But my favorite place is Hawai‘i
Bright is the sky and the ocean so clear
This is the place that I love

I know sometimes that it’s hard to live here
Everything is so expensive
But my daddy told me a long time ago
This is your place, it’s your home

I know the people, often they wonder
How can we all live together
ALOHA is not just some words on a sign
It’s something you feel from inside

So…I want to help you feel my Aloha

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207 NOLAND, supra note 48, at 163. “The Aloha Song” was written by native Hawaiian musician Brother Noland and his daughters Erika-Rae Conjugacion, then age 12, and Brooke Ligaya Conjugacion, then age 9.
I know you can feel it like me
It’s here in your heart