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## **Capital Punishment Reforms in Illinois: Comparing the Views of Police, Prosecutors, and Public Defenders**

**Robert M. Lombardo<sup>1</sup> & David E. Olson<sup>2</sup>**

### **Abstract**

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On 9 March 2011, Governor Patrick Quinn abolished capital punishment in Illinois stating that the state's system of imposing the death penalty was inherently flawed. Quinn's announcement followed an eleven-year effort to end the death penalty that began with a 2000 moratorium on executions imposed by then Governor George Ryan. This moratorium was the direct result of the appellate reversal of a series of death-row convictions. Prompted by these reversals, Ryan also created the Governor's Commission on Capital Punishment to study the use of the death penalty in Illinois. As a result of this effort, comprehensive legislation was enacted to reform the Illinois death penalty system, and the Capital Punishment Reform Study Committee was formed to gauge the implementation and impact of the reforms. Working with the Committee, the authors surveyed 413 Illinois police departments, 102 Illinois State's Attorneys' Offices, and all 99 Public Defender's Offices in an effort to determine the extent to which criminal justice agencies had implemented the requirements of the capital punishment reform legislation, and whether there were any significant barriers to the implementation of the legislative requirements. This paper reports the results of this inquiry, and argues that capital punishment ended in Illinois because of the complexity of the death penalty and the perceived inability to devise a system free of racial, geographic, and economic bias and not the failure of the criminal justice community to implement the reforms recommended by the Governor's Commission on Capital Punishment.

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### **Introduction**

On January 31, 2000, Governor George Ryan imposed a moratorium on capital punishment in Illinois stating that the system was "fraught with error."<sup>1</sup> The moratorium was prompted by the wrongful conviction of thirteen death-row inmates and the release of Anthony Porter just 48 hours before his scheduled execution.

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Porter's release followed an investigation by Northwestern University journalism students who had obtained a confession from the actual murderer in the case. Five weeks later on March 9, 2000, Ryan created the Governor's Commission on Capital Punishment to study the administration of the death penalty in Illinois and to recommend ways to ensure that capital punishment was carried out in a fair, just, and accurate manner.<sup>ii</sup>

After two years of deliberation, the Governor's Commission produced its report on April 15, 2002 concluding that the death penalty should be abolished unless the state of Illinois implemented the recommendations set forth in the commission's study.<sup>iii</sup> Their report called for sweeping changes in the investigation and prosecution of death penalty cases, and produced eighty-five recommendations aimed at reforming the administration of the death penalty system.

While the Illinois legislature evaluated the commission's work, Governor Ryan and his staff conducted their own case-by-case review of the inmates on death row. This review led Governor Ryan to pardon four men on January 10, 2003 who had suffered what he described as the "manifest injustice" of having provided false confessions after being tortured by Chicago police.<sup>iv</sup> The next day, speaking at Northwestern University, Governor Ryan commuted the sentences of 167 additional persons sitting on death row concluding that the capital punishment system in Illinois was "broken" and haunted by "error" in determining who among the guilty deserved to die.<sup>v</sup>

Over the course of the next twelve months, the Illinois legislature passed a series of death penalty reforms including Public Act 93-0517 (Mandatory Recording of Homicide Confessions), Public Act 93-0605 (Death Penalty System Reform), and Public Act 93-0655 (Police Perjury in Homicide Cases). The recording of homicide confessions was seen as key to death penalty reform in Illinois. An investigation by the *Chicago Tribune* reported that incriminating statements had been suppressed in at least 274 murder cases in a ten-year period between 1991 and 2001 because of coercive interrogation practices.<sup>vi</sup> Interrogations had become so controversial in homicide investigations that the question of guilt was often overshadowed by disputes over whose version of what had occurred in the interrogation room was accurate.

Recording the interrogation was not only seen as the key to providing judges with the information they needed to make accurate assessments of the trustworthiness of confession evidence, but also as a way to prevent abusive police interrogation practices.

Public Act 93-0517, commonly referred to as the “Recorded Statements Act,” amended a number of Illinois statutes in order to facilitate the recording of homicide interrogations. These include the Criminal Justice Information Act, the Police Training Act, the Juvenile Court Act, and the Criminal Code.<sup>vii</sup> The centerpiece of the legislation, Section 725 ILCS 5/103-2.1 (b) (Rights of the Accused), created a presumption that any in-custody statement, taken at a place of detention (police station) in connection with a homicide investigation is inadmissible at trial if it is not “electronically recorded.” Electronic recording includes motion pictures, audiotapes, videotapes, and digital recordings, but only audio recording is required. The electronic recording requirement pertains to both adults and juveniles alike. There are, however, a number of exceptions to the requirement including statements made: voluntarily or spontaneously, in open court, when electronic recording is not feasible, during exigent circumstances, during routine arrest processing, by a suspect who requests not to be electronically recorded, during a custodial interrogation conducted out of state, or at a time when the interrogators are unaware that a death has occurred. In order to introduce one of these exceptions, the state must prove by a preponderance of the evidence that the exemption is applicable.

Although the recording of homicide interrogations by the police received the most public attention, the Death Penalty System Reform Act (93-0605) provided a series of additional substantive changes to Illinois law. These include:

- The reduction of the number of death penalty eligibility factors.<sup>viii</sup>
- The replacement of the death penalty mitigation jury instruction of “no mitigation sufficient to preclude death” with “death is appropriate”.<sup>ix</sup>
- The addition of extreme emotional or physical abuse and reduced mental capacity to the list of Illinois death penalty mitigation factors.<sup>x</sup>
- Requiring judges to provide a written opinion to the Illinois Supreme Court when they do not concur with a jury’s death verdict.<sup>xi</sup>
- Judicial decertification of death penalty eligibility if the only evidence is the uncorroborated testimony of an in-custody informant, single eye-witness, or an accomplice.<sup>xii</sup>

- Allowing the Illinois Supreme Court to reverse a death sentence whenever the court finds that the sentence is not “fundamentally just”.<sup>xiii</sup>
- The establishment of pre-trial reliability hearings for jailhouse and in-custody informants.<sup>xiv</sup>
- The creation of mandatory lineup and photo spread procedures in capital cases.<sup>xv</sup>
- Requiring law enforcement to disclose all evidence to the prosecuting authority.<sup>xvi</sup>
- The exclusion of the mentally retarded from the death penalty.<sup>xvii</sup>
- The establishment of DNA “actual innocence” hearings.<sup>xviii</sup>
- The establishment of the defense right to DNA database marker grouping analysis.<sup>xix</sup>
- The establishment of “actual innocence” hearings.<sup>xx</sup>
- The provision of funding for DNA testing from the Capital Crimes Litigation Trust Fund.<sup>xxi</sup>
- The reissuance of the Capital Crimes Litigation Act.<sup>xxii</sup>

Public Act 93--0655 (50 ILCS 705/6.1) commonly referred to as the “Police Perjury Act” requires the decertification of any police officer who “knowingly and willingly” makes false statements regarding a material fact relating to an element of the offense in a murder proceeding.

This new legislation was the direct result of the discovery of police perjury in capital cases. In the case of Rolando Cruz and Alejandro Hernandez, for example, the two defendants were wrongfully convicted and sentenced to death for the 1983 kidnapping, rape, and murder of ten- year-old Jeanine Nicarico based upon the testimony of police officers who falsely claimed that Cruz had told them details of the crime.<sup>xxiii</sup> Shortly after the trial, Brian Duggan, a repeat sex offender, confessed that he alone had committed the murder.

According to the Police Perjury Act, if a defendant is convicted of murder and alleges that a police officer, under oath, made such false statements, the Illinois Labor Relations Board shall hold a hearing to determine whether the officer should be decertified as a police officer. If a defendant is acquitted of murder and claims that a police officer made such false statements, the defendant may file a complaint with the Illinois Law Enforcement Training and Standards Board. (The Training and Standards Board certifies police officers in the state of Illinois.) If the board’s executive director finds that the complaint is meritorious, an investigation will be conducted. If the investigation finds the claim to be legitimate, the case will then be forwarded to the Illinois Labor Relations Board for a hearing.

Public Act 93-0605 also created the Capital Punishment Reform Study Committee to assess the implementation of the reforms enacted by the Illinois legislature. The committee was made up of representatives from the Illinois Senate and the House of Representatives, and the offices of the Governor, Attorney General, State Appellate Defender, State's Attorneys' Appellate Prosecutor, the Cook County State's Attorney, and the Cook County Public Defender. Specifically, the committee was charged with studying the uniformity of the application of the death penalty in relation to the geographic area and race of the victim; the implementation of training for police, prosecutors, defense attorneys, and judges; the impact of the reforms on the quality of evidence used in capital prosecutions; the quality of representation provided by defense counsel in capital cases; and the impact of costs associated with the administration of the new Illinois capital punishment system.

To assist the Capital Punishment Reform Study Committee in accomplishing their legislative mandate, faculty from the Criminal Justice Department at Loyola University, Chicago worked with the committee to survey Illinois criminal justice agencies in order to determine the impact of the legislation on their operations. Researchers from Loyola surveyed police departments, state's attorneys, and public defenders throughout the state in an effort to determine the extent to which these agencies had implemented the requirements of the capital punishment reform legislation, and whether there were any significant barriers to the implementation of the legislative requirements.

Three sets of questionnaires were developed: one for police departments, one for state's attorneys' offices, and one for public defender's offices. Questions were formulated according to the mandated capital punishment reforms and the responsibilities of each agency. The police administrator survey differed from the state's attorneys' and public defenders' surveys, which were largely the same and are reported together here. This article reviews the implementation of these reforms through December, 2009.

Prior to the distribution of the surveys, the authors determined the number of homicides reported to the Illinois State Police in the four-year period between January 2004 and December 2007 and identified the law enforcement, prosecutor, and public defender agencies that handled these cases.

This period represents the most complete data available in the period between the implementation of the capital punishment reforms and the inauguration of this research. A total of 3,074 homicides were reported in Illinois during this time period.

What follows is a summary of the responses to the Capital Punishment Reform Study Committee surveys. The second part of this article reviews the responses of Illinois police agencies to these reforms. The third section describes the responses of state's attorneys and public defenders. The fourth and final section reports areas where additional work was needed. All of the surveys contained specific questions that the queried agencies were asked to respond to. Some of the questions allowed the respondents to provide additional qualitative information. For example, both the state's attorneys and public defenders were asked if they had sufficient resources to handle death-eligible cases. Those who replied "no" were permitted to list the additional resources that they needed. Although these types of responses varied widely; they were used, when possible, to further interpret the survey results.

The sweeping legislative reforms and the changes to the criminal code reviewed in this article were part of a comprehensive effort to insure the fairness and integrity of the capital punishment system in Illinois. This effort, however, ended with the elimination of the death penalty in 2011. As this study will show, most of the recommended reforms were embraced by the criminal justice community, yet capital punishment, itself, was put to death. It was not the inability of the criminal justice system to develop adequate safeguards in capital cases, but larger societal issues that led to the end of the death penalty in Illinois. Announcing the passage of Senate Bill 3539 (Abolition of the Death Penalty), Governor Patrick Quinn stated that the evidence presented convinced him that it is impossible to devise a system free of discrimination on the basis of race, geography, or economic circumstances.<sup>xxiv</sup> Quinn's conclusion was based on research conducted for the Capital Punishment Reform Study Committee which found that there was a greater risk of the imposition of the death penalty when the homicide was committed in a rural rather than an urban area and when the victim was white rather than non white.<sup>xxv</sup>

## **The Police Administrator Survey**

The Police Administrator Survey consisted of 75 questions broken down into 6 substantive areas: the recording of interrogations of murder suspects, the recording of interrogations in other crimes, equipment related to the recording of custodial interrogations, training, lineup procedures in murder investigations, and investigative procedures. The survey was mailed to 413 Illinois police departments including 303 municipal agencies, 102 sheriff's offices, and 8 multi-jurisdictional homicide task forces. These agencies included every police department that reported a homicide in the years 2004 to 2007.<sup>xxvi</sup>

A screening question was included at the beginning of the survey instructing respondents to complete the survey only if they investigated the homicides that occurred in their jurisdiction. If homicide investigations were handled by another law enforcement agency, such as the county sheriff, state police, or multi-jurisdictional homicide task force, they were not asked to complete the rest of the survey and to return the screening portion of the survey to the research team. Responding police agencies were grouped into three categories, small, medium, and large departments based upon the number of full-time officers they employed. Small-size departments were defined as those employing 0-9 full-time officers. Medium-size departments were defined as those employing 10-35 full-time officers, and large-size departments were defined as those employing more than 35 full-time police officers.

One hundred ninety-three police departments responded to the survey. Of the 193 agencies, 143 (74%) indicated that they investigate their own homicides. However, the numbers of police agencies that investigate the homicides that occurred in their jurisdictions varied by agency size--smaller agencies were less likely to investigate their own homicides than larger agencies. More than three-quarters (81%) of the medium-size agencies and 89% of the large-size agencies investigate their own homicides. Those agencies that did not investigate homicides in their jurisdiction rely on local task forces, major case assistance teams, their county sheriff, or the Illinois State Police to investigate their homicides.



## The Recording of Interrogations of Murder Suspects

Public Act 93-0517 (Recorded Statements Act) requires the electronic recording of homicide interrogations.<sup>xxvii</sup> This requirement was created to prevent suspects from confessing to crimes that they did not commit. Experience and academic research have both pointed to the fact that suspects can be forced to confess through psychological coercion and trickery. In fact, included among those wrongfully sentenced to death in Illinois was a group that came to be known as the "Death Row Ten."<sup>xxviii</sup> The common characteristic shared by these defendants was the allegation that excessive force was used by police officers to extract a confession. In fact, all the Death Row Ten defendants claimed to have been tortured by Chicago Police Lieutenant Jon Burge and detectives from Chicago's Area Two Violent Crimes Unit. All told, over fifty suspects interrogated by Chicago police at the Area Two station claimed to have been tortured during their interrogations.

Of the 143 police departments reporting that they investigate the homicides that occur in their jurisdiction, 91 (69%) report having conducted one or more interrogations of murder suspects between the effective date of the legislation (July 18, 2005) and when the survey was sent out (February 28, 2009). Based on the survey results, all but one of these interrogations was recorded. Of those interrogated, 60% confessed and all of those confessions were recorded. Agency responses again varied by size. Smaller agencies were less likely to have conducted custodial interrogations than medium- and large-size agencies: more than one-half (56%) of the medium-size agencies and three-quarters (88%) of the larger agencies recorded custodial interrogations in homicide cases.

Although the law does not require police officers who are conducting homicide interrogations to inform suspects that they are being recorded, most (76%) police departments inform murder suspects at least some of the time, with the majority (62%) informing suspects that they are being recorded all of the time. Only 5% of murder suspects refused to be recorded. One-third (39%) of the responding police departments electronically recorded the suspect's refusal. Confessions were most often given during recorded interrogations, not spontaneously or during the booking process. Most (75%) police departments also recorded witness testimony in murder investigations at least some of the time, one-third (35%) recorded witness testimony all of the time.

Of those agencies that did not conduct an interrogation, 93% indicate they were prepared to record interrogations in homicide investigations. In fact, nearly one-half (48%) of the police departments that responded to the survey indicated that they were already recording murder interrogations before the implementation of the Recorded Statements Act. Additionally, most departments would or do use digital audio-video devices, follow specific written protocols for recording interrogations, and have the recording devices in plain view of the suspects at least some of the time.

While police have accepted the requirement to record interrogations in capital cases, most (75%) report that electronic recording affects a suspect's cooperation at least some of the time. Police often argue that the recording of a defendant's statements naturally causes them to be more careful about what they say. Further analysis, however, indicates that actual experience with conducting recorded interrogations (the volume of interrogations conducted) directly affects officers' views of suspect cooperation. Those officers, who have conducted more recorded interrogations in homicide investigations, were less likely to indicate that electronic recording adversely affected suspect cooperation. Fifty percent of the responding officers who had conducted 5 or more recorded interrogations responded that electronic recording never effected suspect cooperation.

Most (72%) police officers also believe that career criminals, such as gang members, play to the jury at least some of the time when their interview is recorded. Some believe that recording gives experienced criminals a chance to downplay their role in the crime and plead their innocence. Further analysis, again, indicates that actual experience with conducting recorded interrogations directly affects officers' views of attempts to play upon the sentiments of the jury. Forty-five percent of the responding officers who had conducted 5 or more recorded interrogations responded that electronic recording never gave suspects a chance to downplay their role or plead their innocence.

Police departments are almost evenly split in their belief that the recording of custodial interrogations affects the interviewing techniques of their detectives. Approximately one-half (53%) responded that the recording of interrogations has affected their interviewing techniques at least some of the time.

Forty-two percent report that the recording of deception or trickery by investigating officers has been an obstacle to a guilty finding when presented to a jury, and 51% are concerned with how juries will perceive their interrogation methods.

In spite of the concerns surrounding the use of trickery by interrogating officers, Illinois courts have routinely upheld the use of deception in custodial interrogation so long as it is not likely to elicit false statements from a suspect.<sup>xxix</sup> It is a widely accepted and legitimate law enforcement practice to tell the suspect untruths about his case, such as stating that his fingerprints were found at the scene of the crime or that a codefendant was cooperating with the police. When electronically recorded and presented to the jury; however, these activities are often used by the defense to discredit the testimony of the investigating officers. In spite of the legality of these practices, nearly two-thirds (63%) of the police departments report that there are disadvantages to recording interrogations because juries do not understand police interrogation techniques.

Despite the problems encountered when using deception, most (75%) police departments agree that electronic recording is beneficial and improves the quality of interrogations and that audio and video recording of murder interrogations should be required (53%). The vast majority (90%) of the responding departments stated that the recording of homicide interrogations has specific advantages including protecting the investigators from false accusations of coercion and brutality, granting integrity to the interrogation process, providing proof that the confession was voluntary, and memorializing the record.

### **Recording of Interrogations in Other Crimes**

Although the majority of the police departments surveyed reported that they do not have a policy to record non-murder interrogations, nearly one-half (46%) indicated that they do record interrogations in specific, non-murder offenses at least some of the time. Table 1 reflects the crimes in which respondents indicated that they "always" record interrogations.

**Table 1: Percentage of Agencies that Always  
Record Non-Murder Interrogations**

<u>Offense</u>	<u>Percent</u>
• Attempted Murder	52%
• Sexual Assault/Abuse	38%
• Robbery	31%
• Burglary	24%
• Aggravated Battery	18%
• Domestic Violence	15%
• Child Abuse	30%
• Other	19%

### **Equipment Related to the Recording of Custodial Interrogations**

There are significant costs associated with the electronic recording of custodial interrogations including: video equipment, back-up video equipment, sound proofing, transcription costs, and the purchase and storage of recording tapes and computer discs. In order to meet these needs and ensure uniformity of equipment throughout the state, the Illinois General Assembly amended the Illinois Criminal Justice Information Act (20 ILCS 3930/7.5) to allow the Illinois Criminal Justice Information Authority to make grants to local law enforcement agencies for the purpose of purchasing equipment for the electronic recording of interrogations.

Although state funding has not been generous, almost all (96%) the police departments who responded to the survey reported having at least one audio-video recording device available, and most have at least one audio-only device available. Further, most (69%) police departments report that at least one of their recording devices was obtained specifically because of the Recorded Statements Act, and that 59% of these devices were acquired using local general revenue funds or purchased with donated money, and not state funds.

The majority of recorded interrogations are stored on computer discs in combination with other mediums, and most police departments store these discs in evidence vaults.

Most (86%) also report that they have the funds to cover the cost of storing electronic recordings, and that they have sufficient funds to obtain the proper equipment (69%), make copies (85%) of the recordings, and store (86%) the recordings. More than half (54%) report that there had not been any technical problems or failures with their recording equipment; however, 14% responded that technical problems hampered a murder investigation that they were conducting. Although most (69%) police departments report having sufficient resources and equipment for audio-video and audio-only recordings, many (63%) indicate a need for backup equipment, resources for the sound-proofing of interrogation rooms (65%), and resources for transcribing recordings (66%).

## **Training**

Public Act 93-0517 amended the Illinois Police Training Act (50 ILCS 705/10.3) to direct the Illinois Law Enforcement Training and Standard's Board to conduct training programs for police offices in the methods and technical aspects of conducting electronic recordings of interrogations. Overall, most (76%) police departments report that their investigators are adequately trained in using electronic recording equipment and that most (79%) have been adequately trained to perform recorded interrogations. However, a majority (64%) indicate that additional training is desired. Most of this training has been conducted by the Illinois Law Enforcement Training and Standard's Board funded Mobile Team (regional training) Units.

## **Lineup Procedures in Murder Investigations**

The Death Penalty System Reform Act (Public Act 93-0605) amended the Illinois Code of Criminal Procedure (725 ILCS 5/107A-5) to require the photographic recording of *all* lineup proceedings and the disclosure of the photographs to the accused during discovery. Each eyewitness who views a lineup or photo spread must also be provided with a form stating that the offender might not be in the lineup and that the eyewitness is not obligated to make an identification. Concerns about eyewitness testimony also led the Governor's Commission to make several recommendations relating to the methods used to identify suspects through lineups and photo arrays in homicide investigations.<sup>xxx</sup> One recommendation stood out among the rest-- the call for sequential lineups. In a sequential lineup, suspects are shown to the witness one at a time rather than all at once.

The purpose of the sequential lineup is to prevent the witness from choosing the offender based upon the witness's comparison of the suspect with the other members of the lineup, rather than actually identifying the offender. Because there was significant opposition to this provision from the law enforcement community, it was not included among the capital punishment reforms; however, the Illinois General Assembly established a sequential lineup pilot program (725 ILCS 5/107A-10) to study the issue.

Administered by the Illinois State Police in three different jurisdictions across the state, the pilot program ran from July 1, 2004 to September 1, 2005.<sup>xxxii</sup> The purpose of the study was to determine if the sequential "double-blind lineup" procedure was the fairest and most appropriate means for administering a lineup. The double-blind component required the lineup to be conducted by an administrator who did not know the identity of the suspect. Much to the surprise of the reform effort, the pilot study, which came to be known as the Mecklenburg Report, did not support the belief that sequential double-blind lineups were superior to simultaneous lineups in producing a lower rate of known false identifications. The findings, however, have been called into question.<sup>xxxiii</sup> Unfortunately, the project had a number of design defects. The most apparent of which was the fact that the lineup facilitators were trained beforehand regarding the purpose of the study, which may have caused them to anticipate the answer.

After its publication, the Mecklenburg Report received a great deal of attention from eyewitness researchers: so much attention that the academic journal, *Law and Human Behavior*, devoted space in their 2008 volume to the issue.<sup>xxxiii</sup> Seven distinguished psychologists, convened by the Center for Modern Forensic Practice at the John Jay College of Criminal Justice, reported that the Mecklenburg study design had "devastating consequences" for assessing the real-world implications of the study. Their commentary focused on the methodology of the study with particular reference to the fact that the sequential presentation was always double-blind, while the simultaneous presentation of suspects was not. These continued problems led the Capital Punishment Reform Study Committee to conclude that the Mecklenburg study was badly designed and to recommend the blind administration of sequential lineups in all homicide investigations.<sup>xxxiv</sup>

While most (75%) police departments responded to the survey that they had not conducted any lineups since July 18, 2005, 78% of all recorded homicide interrogations also involved lineup procedures. If they had conducted a lineup or would conduct a lineup, most (63%) police departments' state that they would use a photo spread or computer generated photos most or all of the time. Only 21% of the responding police departments use an in-person (live people) lineup most or all of the time. Additionally, most (60%) used a simultaneous lineup (showing all individuals in the lineup at once) at least some of the time. Only 37% of the responding departments used sequential lineups (showing individuals in the lineup separately to witnesses) at least some of the time. Of the responding departments that use sequential lineups, only 40% allow witnesses to view each person more than once. Further, most (63%) police departments do not electronically record the lineup procedure or the witness's identification of a suspect.

### **Investigative Procedures**

Although the questions responded to in this section were not part of the capital punishment reforms, the authors thought that they were important to the successful completion of a homicide investigation, and were included in the survey. They generally revolve around the involvement of the state's attorney prior to charging in a homicide investigation. Most (73%) police departments report that the state's attorneys' office is usually involved in an investigation prior to an arrest. One-half (49%) of the responding police departments report that the state's attorney usually interviews *suspects* before charging, while the other half (49%) report that interviews usually take place after charging. Similarly, approximately one-half (53%) of the police departments report that the state's attorney usually interviews *witnesses* before charging, and 47% report that the state's attorney interviews *witnesses* after the suspect is charged. Almost all (90%) report that they cannot detain witnesses for questioning, but that they seek voluntary cooperation or obtain a subpoena to question witnesses. Finally, 58% of the polled police departments report that they can detain a murder suspect for only 48 hours without charging. Most (87%), however, report that the 48-hour charging rule does not allow enough time to complete complex homicide investigations.

## **State's Attorneys' and Public Defender's Surveys**

The State's Attorneys' Survey consisted of 45 questions broken down into six substantive areas: staffing and resources, the recording of interrogations of murder suspects, eyewitness identification, murder case evidence processing, murder and capital case trials before indictment, and murder and capital case trials after indictment. The survey was mailed to all 102 Illinois state's attorneys, and covered a four-year period (2004-2007). Responding agencies were grouped into three categories: state's attorneys' offices with 0 murder convictions, state's attorneys' offices with 1 to 10 murder convictions, and state's attorneys' offices with 11 or more murder convictions. A total of 55 (56%) state's attorneys' offices responded to the survey. Twenty-four percent (13) of the responses were from counties with 0 murder convictions, 64% (34) from counties with 1 to 10 murder convictions and 16% (9) of the returned surveys were from counties with more than 11 murder convictions.

The Public Defender's Survey consisted of 43 questions covering the same 6 substantive areas as the State's Attorneys' Survey. The survey was mailed to all 99 Illinois public defenders and covered the same time period (2004-2007) as the State's Attorneys' Survey.<sup>xxxv</sup> The responding agencies were again divided into three groups, 0 murder convictions, 1 to 10 murder convictions, and 11 or more murder convictions. A total of 62 (62%) Illinois public defenders' offices responded to the survey. Twenty-one percent (13) of the responses were from counties with 0 murder convictions, 63% (39) from counties with 1 to 10 murder convictions, and 16% (10) from counties with more than 11 murder convictions.

### **Office Staffing and Resources**

Overall, 23% of the total numbers of assistant state's attorneys, employed by the responding agencies, were members of Illinois' Capital Litigation Trial Bar. (The Capital Litigation Trial Bar was created by Illinois Supreme Court Rule 714 to certify attorneys who have sufficient training to try capital cases in Illinois.) However, the number of capital-litigation trained attorneys varied by jurisdiction caseload as measured by the number of murder convictions. Among the offices with 0 murder convictions, 14% of the state's attorneys were members of the Capital Litigation Trial Bar. So were 10% of the state's attorneys in offices with 1 to 10 murder convictions, and 16% of the state's attorneys in offices with 11 or more murder convictions.



In spite of the relatively low numbers of capital litigation trained prosecutors, 91% of the state's attorneys who participated in the survey reported that their capital litigation trained staff met the needs of their office. However, only 61% stated that they had sufficient resources to handle death penalty cases. Most agreed that capital litigation strained the budgets of their office.

Similarly, 19% of the total number of assistant public defenders, employed by the responding agencies, were members of Illinois' Capital Litigation Trial Bar. Like the state's attorneys, the number of capital litigation trained defense attorneys also varied by caseload.

**Table 2: Percent of Attorney Members of the Capital Litigation Trial Bar**

Volume of Murder Convictions	SAOs	PDs
0	14%	14%
1 – 10	10%	10%
11 or more	16%	19%

Among the offices with 0 murder convictions, 14% of the assistant public defenders were members of the Capital Litigation Trial Bar: so were 10% of the assistant public defenders in offices with 1 to 10 murder convictions and 19% of the assistant public defenders in offices with 11 or more murder convictions. Just like the state's attorneys, the majority (70%) of public defenders report that the capital litigation training that they had received met the needs of their office, but unlike the state's attorneys, most (70%) public defenders responded that they did not have sufficient resources to handle death penalty cases. This was particularly a problem in smaller offices that did not have the staff or resources to handle the increased demands of a capital case.

Although state's attorneys report that there are sufficient numbers of capital litigation trained prosecutors in their offices, slightly more than half (58%) report that there are sufficient numbers of defense attorneys either in private practice or within public defenders' offices, who are members of the Capital Litigation Trial Bar. These findings differ somewhat for Public Defenders. Forty-two percent of the responding public defenders report that there are a sufficient numbers of defense attorneys and public defenders who are members of the Capital Litigation Trial Bar to handle capital cases in their jurisdiction.

While the great majority (91%) of Illinois state's attorneys' report that their personnel had been sufficiently trained to handle capital cases, only 21% report that their attorneys had received specialized training in the issue of mental retardation. The public defenders report similar findings. Only 18% of the public defenders surveyed report that their personnel had received specialized training in this important area. Public Act 93-0605 prohibits the execution of the mentally retarded and mandates that the defendant establish his or her mental retardation by a preponderance of the evidence at either a pretrial hearing or at the aggravation or mitigation stage of the trial.

### **Recording of Interrogations of Murder Suspects**

Although the Illinois legislature believed that the electronic recording of suspect interrogations is essential to death penalty reform, only 5% of the responding state's attorneys' offices reported that one of their prosecutors is always present during custodial interrogations of murder suspects. While state's attorneys reported limited participation in suspect interrogation, many have used electronically recorded interrogations as evidence in court. Of the state's attorneys who have prosecuted a homicide case, 73% report technical problems with the review of interrogation recordings and 71% report technical problems with the presentation of interrogation recordings in court.<sup>xxxvi</sup> These findings differ from those of public defenders, who experienced technical problems reviewing recorded interrogations only 35% of the time and experienced problems with the presentation of recorded interrogations only 24% of the time.

Most (75%) of the state's attorneys who handled murder prosecutions report that the recording of custodial interrogations had no effect on the way police detectives conduct murder interrogations. Public defenders, however, had significantly different views. Only 41% report that the recording of custodial interrogations had no effect on the way police detectives conduct murder interrogations, a 34-percentage point difference. Public defenders generally believe that police are less coercive in their interview techniques since the implementation of the requirement to record interrogations.

While the majority (83%) of state's attorneys reported that the availability of recorded interrogations was instrumental in obtaining a conviction in a murder prosecution, only 10% of the responding public defenders agreed. However, only 10% percent of the responding state's attorneys reported that the availability of recorded interrogations and confessions had influenced their decisions to seek the death penalty. Public defenders responded similarly; only 12% responded that the availability of recorded interrogations and confessions had influenced the decision of the state's attorney to seek the death penalty.

Although recorded interrogations made it easier to obtain a conviction, only 40% of the state's attorneys believe that electronically recorded interrogations had influenced a defendant's willingness to plea bargain, and only 11% believe that recorded interrogations influenced the defendant's willingness to seek a jury trial. Few (21%) also believe that the electronic recording of murder interrogations had reduced the number of motions to suppress confessions or admissions owing to a failure to give Miranda warnings, the use of coercion, or the use of improper interview techniques. Like state's attorneys, only 43% of the responding public defenders report that recorded interrogations had influenced the defendant's willingness to plea bargain, and only 4% believe that recorded interrogations had influenced the defendant's willingness to seek a jury trial. Public defender's differed, however, in their belief that recorded interrogations reduce the number of motions to suppress evidence. Forty-five percent of the public defenders polled report that recorded interrogations had reduced the number of motions to suppress evidence, while only 21% of the responding state's attorneys agreed. Public defenders generally attributed this reduction to the fact that recorded interrogations provide irrefutable evidence that Miranda warnings had been given.

Although most state's attorneys endorse the recording of suspect interrogations in murder investigations, few (22%) believe that the requirement of electronic recording of custodial interrogations should be expanded to include additional felony offenses largely because of a lack of resources. Yet, nearly one-third (33%) report that police agencies provided recorded interrogations and confessions in non-murder investigations "most of the time." Public defenders report the opposite. Eighty-six percent of public defenders endorsed the recording of suspect interrogations in cases other than murder.

In spite of different opinions about extending recorded interrogations to non-murder investigations, both state's attorneys (60%) and public defenders (58%) report that the electronic recording of interrogations and confessions made it easier to obtain convictions in murder investigations.

### **Eye Witness Identification**

Eighty-eight percent of the responding state's attorneys' reported that members of their office were present during eye-witness identification procedures. When asked if they prefer using police lineup administrators who did not know the identity of the suspect, over one-half (55%) of the state's attorneys' responded that they had no opinion and only 31% stated that they preferred the blind-administrator method. Ninety-six percent were satisfied with the lineup procedures used by police departments for eyewitness identification in murder cases. The responses were dramatically different for public defenders. Seventy-eight percent of the responding public defenders reported that they prefer the blind-administrator method and only 35% stated that they were satisfied with the eye-witness identification procedures used by police departments in murder cases. They attributed their dissatisfaction to the fact that police seldom used live line-ups, relying extensively on photo arrays.

### **Murder Case Evidence Processing**

The Death Penalty System Reform Act (725ILCS5/114-13) also required that law enforcement personnel provide the state's prosecutor with all investigative reports, memoranda, and field notes stemming from a homicide investigation. In addition, the investigating agency must provide any material within its possession that would negate the guilt of an accused or reduce his or her punishment for a homicide offense. When asked if they have experienced any problems with obtaining reports from police departments in homicide investigations, only 25% of the responding state's attorneys responded that they had. This opinion was not shared by public defenders. Sixty-one percent of the public defenders in the survey report that they had experienced delays in obtaining police reports. Some reported that it took as long as two months to obtain investigative files and field notes.

## Experience with Capital Cases Pre-Indictment

State's attorneys and public defenders were surveyed about their experience in six areas concerning pre-indictment capital cases. Each area represents a problem that the Illinois death penalty reforms sought to remedy. They include the 120 day death-penalty certificate filing rule, the prohibition against executing the mentally retarded, the use of depositions in capital cases, reduction in the number of death penalty eligibility factors, the financial cost of death penalty litigation, and the work of forensic science laboratories in death penalty cases.

**The 120 Day Rule.** The Illinois Rules of Criminal Proceedings require that the state give notice of its intent to seek or decline the death penalty within 120 days of arraignment, or by a later date set by the trial court for good cause.<sup>xxxvii</sup> Most (78%) state's attorneys report that they believe the 120 day requirement was sufficient to determine if the death penalty should be sought. Only 15% could name a specific case where the 120 day rule did not provide sufficient time to seek or decline a death penalty certificate. This position was shared by public defenders, 84% of whom agreed that the 120 day requirement was sufficient; only 14% could name a specific case in which 120 days was not sufficient to certify the death penalty.

**Mental Retardation.** The Death Penalty System Reform Act (725 ILCS 5/114-5) mandates that mentally retarded persons cannot be put to death, and expands the mitigating factors considered by the jury to include the defendant's history of extreme emotional or physical abuse, or whether the defendant suffers from reduced mental capacity. The act requires the defendant to establish his or her mental retardation by a preponderance of the evidence at either a pretrial hearing, or at the aggravation and mitigation stage. If the court determines that a capital defendant is mentally retarded, the case shall no longer be considered a capital case; however, the state may appeal the ruling. The act also requires that the mental retardation existed before the defendant reached eighteen years of age. The factors to be used to determine mental retardation include having an IQ of 75 or below, or significant deficits in adaptive behavior in at least two of the following skill areas: communication, self care, social or interpersonal skills, home living, self direction, academics, health and safety, use of community resources, and work.<sup>xxxviii</sup>

State's attorneys and public defenders were asked two questions in the survey regarding mental retardation.

The first asked state's attorneys if the new mitigating factors for abuse or diminished capacity changed their decision to seek capital punishment. Few (4%) state's attorneys believed that they had. Ten percent of the public defenders stated that they thought the changes had affected state's attorneys' decisions to seek the death penalty. The second question asked if the respondents were satisfied with the factors enumerated in the Illinois statute and the process used in court to determine mental retardation. Approximately 85% of the state's attorneys responded that they were. Public defenders reported similar findings. Seventy-four percent reported that they were satisfied with the process used to determine mental retardation.

## **Depositions**

As part of the capital punishment reforms, Illinois Supreme Court Rule 416 (Procedures in Capital Cases) was amended to allow depositions in death penalty cases in order to enhance the truth-seeking process. Depositions may be taken with leave of the court from any potential witness in a case.

Approximately one-third (38%) of the responding state's attorneys believe that allowing depositions in capital cases improves the prosecution of the case. Public defenders; however, reported different findings. Eighty-five percent of the responding public defenders thought that depositions improved the prosecution of a capital case largely because they provided greater access to witnesses.

**Death Penalty Eligibility Factors.** Death penalty eligibility factors were also reduced by the Death Penalty System Reform Act (720 ILCS 5/9-1). Six of the fifteen felony murder predicates were eliminated, including: armed violence, forcible detention, arson, burglary, criminal drug conspiracy, and street gang drug conspiracy.<sup>xxxix</sup> However, the act added felonies that are "inherently violent" crimes. These crimes include armed robbery, robbery, predatory criminal sexual assault of a child, aggravated criminal sexual assault, aggravated kidnapping, aggravated vehicular hijacking, aggravated arson, aggravated stalking, residential burglary, and home invasion. When asked if the number of factors that make a homicide case eligible for the death penalty should remain the same, be reduced, or expanded, 80% of the responding state's attorneys thought that they should remain the same. Fifty-one percent of the responding public defenders agreed that the death-eligible factors should remain the same.

**Financial Cost of Death Penalty Litigation.** The Death Penalty System Reform Act (725 ILCS 124/19) also repealed the sunset provision of the Capital Litigation Trust Fund, making the establishment of the trust fund a permanent reform. The fund was created in 1999 by the Illinois General Assembly to provide both defense counsel and prosecutors with access to sufficient resources to cover the cost of litigating death penalty cases. The fund not only provided financial resources to ensure that a defendant has access to competent counsel, but also provided money for prosecutors to defray the high costs of death penalty prosecution. In spite of the Capital Litigation Trust Fund, state's attorneys expressed some concern over the cost of pursuing the death penalty in Illinois. Forty percent report that cost affected the likelihood that the death penalty would be sought, and 30% responded that cost should be considered when determining whether capital litigation should be pursued. Public defenders provide somewhat different responses. Sixty-one percent of the public defenders questioned believe that cost affected the likelihood that the death penalty would be sought, and 61% believe that cost should be considered when pursuing the death penalty

**Forensic Laboratories.** DNA testing provides law enforcement with unparalleled opportunities to test biological evidence in capital cases; however, the Governor's Commission on Capital Punishment found that DNA testing was not available to all defendants in capital cases because of deficiencies in crime laboratory funding.<sup>xi</sup> As a result, the Death Penalty System Reform Act (725 ILCS 124/15) extended the authority of the Capital Litigation Trust Fund making it available to cover the cost of DNA testing requested by a capital defendant. This change was prompted by the fact that DNA evidence has the potential to exonerate those who have been wrongly convicted of a capital offense, as evidenced by the exoneration of three men in 2001. Omar Saunders, Larry Ollins, and Calvin Ollins, who had been sentenced for the murder of Lori Roscetti in 1986, were all released after serving fifteen years on death row when DNA evidence exonerated all three men of any guilt in the slaying.<sup>xii</sup> While more than 61% of the surveyed state's attorneys and 68% of the surveyed public defenders experienced delays in obtaining forensic lab results that hindered discovery and court proceedings in murder prosecutions, both state's attorneys and public defenders were unanimously (100%) satisfied with the quality of the forensic work.

## Experience with Capital Cases Post-Indictment

State's attorneys and public defenders were also surveyed in four substantive areas about their experience with capital cases post-indictment. Each represents a problem area that the Death Penalty Systems Reform Act sought to remedy. They include juror questionnaires and instructions, case management conferences, jailhouse informants, and competency to handle capital cases.

**Juror Questionnaires & Instructions.** Juror questionnaires contain questions proposed by the prosecution and the defense in the *voir dire* (examination of jurors) stage of a criminal trial. They are reviewed by the court to reach a final consensus and then given to prospective jurors prior to being chosen to sit on a jury. Although not part of the Death Penalty System Reform Act, the Capital Punishment Reform Study Committee recommended that juror questionnaires be used in all capital cases.<sup>xliii</sup> Due to the unique nature of capital cases, the committee recommended that specific questions be determined by the parties and the trial judge on a case by case basis. Recommended topics included case specifics; the juror's background including employment and family history, military and educational background, religious affiliation, and physical and medical condition; as well as the juror's views on capital punishment, the criminal justice system, and law enforcement. When asked if juror questionnaires were used in capital cases in their county, only 18% of the responding state's attorneys said that they were. Twelve percent said that they were not, and 69% had not conducted a death penalty prosecution during the period of the survey. Similar responses were given by public defenders. Only 23% of the public defenders reported that juror questionnaires were used, 12% reported that they were not, and 64% had not participated in a death penalty prosecution during the studied period.

The Illinois Commission on Capital Punishment also made a number of recommendations regarding pattern jury instructions including: the warning that eyewitness testimony should be carefully examined in light of the circumstances of the case, particularly in the case of cross-racial identification; cautioning the jurors about the reliability of the testimony of in-custody informants; and the fact that a written or electronically recorded statement is more reliable than a non-recorded summary.<sup>xliiii</sup> Although the legislature has yet to act on this proposal, the Capital Punishment Reform Study Committee felt that it was important enough to include in this survey.



When asked if there was a need for pattern jury instructions in death-penalty prosecutions, all of the state's attorneys responded that there was such a need. Ninety-eight percent of the public defenders agreed.

**Case Management Conferences.** A case management conference is a meeting that takes place between the judge and the parties to the litigation before trial. Illinois Supreme Court Rule 416 requires courts to hold a case management conference in capital cases no later than 120 days after the defendant has been arraigned, or 60 days after the state provides notice of its intent to seek the death penalty, whichever is earlier.<sup>xiv</sup> At the case management conference, the court will confirm that both prosecution and defense counsel are members in good standing of the Capital Litigation Trial Bar, and appoint qualified counsel as necessary. The conference also provides the court with the opportunity to verify that the state has provided notice of the aggravating factors that it intends to introduce at the capital sentencing hearing. The court may also take any other steps necessary to ensure compliance with other measures within Rule 416 designed to improve pretrial and trial procedures in capital cases.

Twenty-two percent of the state's attorneys surveyed responded that they used case management conferences in every potential death penalty case. Many (38%) believe that case management conferences should be held in open court. When asked if the case management conference should be part of the court record, state's attorneys overwhelmingly (84%) stated yes. Twenty-three percent believe that case management conferences improved the processing of capital cases. Public defenders gave similar responses. Forty percent believe that case management conference should be held in open court. Eight percent believe that case management conferences should be part of the court record. When asked if case management conferences improved the processing of capital cases, 25% of the responding public defenders said that they did.

**Jailhouse Informants.** The Death Penalty System Reform Act (720 ILCS 5/9-1) amended the Illinois Criminal Code to allow a court to decertify a capital case if the evidence against the defendant is limited to the uncorroborated testimony of an in-custody informant.<sup>xiv</sup> Under the old law, jailhouse informants were treated as any other witnesses. Juries were often instructed of the unreliable nature of informants and their responsibility for determining the informant's reliability.

The Death Penalty System Reform Act created a new provision in the criminal code titled “Informant Testimony,” and defined an “informant” as one who is to testify about admissions made to him while contemporaneously incarcerated in a penal institution.<sup>xlvi</sup> If the state elects to present the testimony of an in-custody informant, it must now conduct a “reliability hearing,” in which the prosecution is required to prove by a preponderance of the evidence that the informant testimony is reliable. The Death Penalty System Reform Act placed the burden on the state, not the person seeking exclusion of the evidence, to prove the witness’s reliability at a separate, pre-trial hearing. When asked if their offices had experience with pre-trial hearings to determine the reliability of jailhouse informant testimony, only 5% of the responding state’s attorneys and 2% of the responding public defenders replied that they had.

Competence to Handle Capital Cases. Illinois Supreme Court Rule 714 requires defense attorneys in capital cases to be certified members of the Capital Litigation Trial Bar. This is to ensure that defense attorneys have sufficient experience and training to handle death penalty cases. The Governor’s Commission reviewed more than 250 cases in which the death penalty had been imposed between 1970 and 2002 and found that 21% of the cases were reversed because of ineffective assistance of defense counsel.<sup>xlvii</sup> The commission also raised the question of training for capital litigation trial judges, and made a number of important recommendations. When asked if the trial judges in their county had sufficient experience to handle a capital case, 37% of the state’s attorneys responded that they did, as did 35% of the responding public defenders. Thirty-seven percent of the state’s attorneys also responded that the defense bar in their county had sufficient experience and competence to handle capital cases. Public defenders had a similar view of state’s attorneys. When asked if state’s attorneys in their county had sufficient experience and competence to handle capital cases, 31% of the surveyed public defenders said that prosecutors were competent enough to handle capital cases.

### **Notable Findings**

Although the Police, State’s Attorneys, and Public Defender’s surveys indicate a substantial degree of conformity with the provisions of the death penalty reforms in Illinois, the following findings are worthy of note.

## Police Survey

- Although most police departments report that the electronic recording of homicide confessions by law enforcement personnel improved the quality of interrogations, police strongly believe that electronic recording affects a suspect's cooperation, that experienced criminals "play" to the jury when recorded, and that juries do not understand police interrogation techniques.
- While most police departments report that their investigators had been adequately trained in the use of electronic recording equipment, over one-half indicated that additional training was needed.
- In spite of the attention given to sequential lineups, they were used by less than one-third of the reporting police departments.
- The great majority of the police departments that participated in this survey responded that the 48 hour charging rule does not allow enough time to investigate complex homicide cases.

## State's Attorneys and Public Defenders

- Few state's attorneys and public defenders received specialized training concerning the issue of mental retardation.
- Both state's attorneys and public defenders believe that there are insufficient numbers of capital litigation trained attorneys in their jurisdictions.
- While most public defenders report that they have sufficient capital litigation training, they do not believe that they have sufficient resources to handle death penalty cases.
- Few state's attorneys participate in electronically recorded suspect interrogation.
- While most state's attorneys report that electronic recording had no effect on the way police detectives conduct custodial interrogations, less than one-half of the public defenders agree.
- Even though the majority of state's attorneys report that the availability of recorded interrogations was instrumental in obtaining a murder conviction, few public defenders agree.
- While few state's attorneys believe that the requirement of recording custodial interrogations should be expanded to include additional felony offenses, the vast majority of public defenders believe that interrogations should be recorded in cases other than murder.
- While four-fifths of state's attorneys believe that the number of death eligible factors should remain the same, only one-half of the public defenders agree.
- While less than one-third of state's attorneys prefer the use of the blind administrator lineup method, it is favored by the nearly four-fifths of the reporting public defenders.

- Although state's attorneys report unanimous satisfaction with police eyewitness identification procedures, only one-third of the responding public defenders believe that currently used procedures are adequate.
- More than one-half of the public defenders surveyed report that they had experienced delays in obtaining police reports.
- While only one-third of the state's attorneys believe that depositions enhance the truth-seeking process in capital cases, over three-fourths of public defenders thought depositions were important.
- More than one-half of the reporting state's attorneys and public defenders experienced delays in obtaining forensic lab results that hinder court proceedings.

**Table 3: Capital Punishment Reform Study Committee Survey**

Yes Responses by:	State's Attorneys	Public Defenders
<b>A. Office Staffing and Resources</b>		
1. Percentage of Illinois offices surveyed.	56%	62%
2. Percentage of attorneys surveyed who were members of the Capital Litigation Trial Bar.	23%	19%
3. Has the training related to capital litigation met the needs of your office?	91%	70%
4. Has your staff received specialized training on the issue of mental retardation?	22%	18%
5. Are there a sufficient number defense attorneys and public defenders who are members of the Capital Litigation Trial Bar in your county to handle death-eligible murder cases?	58%	42%
6. Are there sufficient resources available to your office to handle death-eligible cases?	61%	30%
<b>B. Experience with the Recording of Interrogations of Murder Suspects</b>		
1. Does your office have attorneys always present during custodial interrogations of murder suspects?	5%	N/A
2. Have you experienced any technical problems reviewing recordings of electronic interrogations?	25%	35%
3. Have you experienced any problems presenting recordings of electronic interrogations in court?	28%	23%
4. Has the recording of interrogations in murder cases changed the way detectives conduct interrogations?	23%	58%
5. Have recorded interrogations been instrumental in obtaining convictions/acquittals in murder prosecutions?	83%	10%
6. Has the availability of recorded interrogations changed the decision to seek the death penalty?	10%	12%
7. Has the existence of recorded interrogations effected the willingness of defendants to plea bargain?	40%	43%
8. Has the existence of recorded interrogations effected the defendant's willingness to seek a jury trial?	11%	4%
9. Has the existence of recorded interrogations reduced the number of motions to suppress confessions due to the failure to give Miranda warnings, coercion or the use of improper interview tactics?	21%	45%

10. Have electronic recordings of interrogations/confessions made it easier to obtain convictions in murder cases?	60%	58%
11. Has your office been provided with recorded interrogations in non-murder cases “most of the time”?	32%	12%
12. Should the requirement to record interrogations be expanded to other felony offenses?	22%	86%

#### C. Eyewitness Identification Procedures

1. Does your office have an attorney present “most of the time” during eyewitness identification procedures of murder suspects?	88%	N/A
2. Do you prefer the use of the “blind administrator” line-up method?	30%	78%
3. Are you satisfied with the current procedures used by police departments for eyewitness identification in murder cases?	98%	35%

#### D. Experience with the Delivery of Murder Case Evidence by the Police

1. Have you experienced problems with police providing investigative reports, field notes, etc. in murder cases?	24%	61%
2. Have you experienced delays in receiving results from forensic laboratories in murder cases?	61%	68%

#### E. Experience with Murder/Capital Cases Pre-Indictment

1. How many certificates to seek the death penalty has your office filed since 1 January 2003?		N/A
2. Is 120 days from arraignment is sufficient time to determine if the death penalty is to be sought ( i. e. file a certificate to seek the death penalty).	78%	84%
3. Have you experienced cases where 120 days to seek the death penalty was not sufficient time?	14%	14%
4. Have the new mitigating factors for abuse or diminished capacity changed your decision to seek capital punishment?	4%	10%
5. Are you satisfied with the process used by the courts to determine mental retardation?	84%	74%
6. Do you believe that depositions in capital cases improve the processing of the cases?	38%	85%
7. Do you believe that the number of death eligible factors should remain the same?	80%	51%
8. Does the cost of pursuing the death penalty in your county reduce the likelihood that it will be sought?	40%	61%



9. Should the cost of pursuing the death penalty be considered when determining if it should be sought?	30%	61%
10. Are you satisfied with the work product of forensic labs in death penalty cases?	100%	78%

#### F. Experience with Murder/Capital Cases Post-Indictment

1. Are juror questionnaires reviewed by the court and given to jurors prior to <i>voir dire</i> ?	18%	23%
2. Are case-management conferences held in every potential death penalty case?	22%	16%
3. Should case-management conferences in death penalty cases be held in open court?	38%	40%
4. Should case-management conferences in death penalty cases be on the court record?	84%	80%
5. Do case-management conferences in death penalty cases improved case processing?	25%	25%
6. Has your office had experience with hearings concerning the reliability of jail house informants in capital cases?	4%	2%
7. Do you believe that judges in your county have sufficient experience to handle capital cases?	37%	35%
8. Do you believe that prosecutors/defense bar in your county has sufficient experience to handle capital cases?	34%	31%
9. Do you believe that there is a need for patterned jury instructions in capital cases?	100%	98%

## Conclusion

While there is some disagreement between the defense bar and police and prosecutors regarding the implementation of the reforms recommended by the Capital Punishment Reform Study Committee, this research demonstrates that a good-faith effort was made to reform the system and most of the recommended improvements were sufficiently enacted. As such, it could be argued that it was not the complexity of the system, but the simple fact that other factors led to the demise of the death penalty in Illinois. For example, research conducted by Pierce and Radelet (2002) for the Governor's Commission on Capital Punishment found that the frequency of death sentencing in Illinois was significantly tied to the region of the state.

A person charged with first degree murder in an area outside of Cook County was three times more likely to receive a death sentence than a person charged with a capital offense in Cook County. There is also the question of race. While Pierce and Radelet argue that the race of the homicide victim was a significant predictor of who was sentenced to death in Illinois, the Capital Punishment Reform Study Commission thought the evidence was insufficient (p. 134).

In the end it may have been public opinion that ended the death penalty in Illinois. Steve Mills of the *Chicago Tribune* reported in 2011 that the work of the Center on Wrongful Convictions at Northwestern University, the case of Anthony Porter, and a series of articles in the *Tribune* transformed the debate on the death penalty from one of accuracy to one of morality arguing that mistakes in the execution of the death penalty had become systematic.

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<sup>ii</sup> Governor's Commission on Capital Punishment, Report of the (Illinois) Governor's Commission on Capital Punishment 1 (Apr. 15, 2002).

<sup>iii</sup> *Id.* at iii.

<sup>iv</sup> Steve Mills and Maurice Possley, Ryan to pardon 4 on Death Row, *Chicago Tribune*, Jan. 10, 2003.

<sup>v</sup> George Ryan, speech, Northwestern University, January 11, 2003, available at [http://www.stopcapitalpunishment.org/ryans\\_speech.html](http://www.stopcapitalpunishment.org/ryans_speech.html).

<sup>vi</sup> Steve Mills and Michael Hughes, Coercive and Illegal Tactics Torpedo Scores of Cook County Murder Cases, *Chicago Tribune*, Dec. 16, 2001.

<sup>vii</sup> The Criminal Justice Information Act (20 Ill. Comp. Stat. 3930/7.5 a) was amended to allow the Criminal Justice Information Authority to make grants to local law enforcement agencies for the purpose of purchasing equipment for the electronic recording of interrogations. The Police Training Act (50 Ill. Comp. Stat. 705/10.3) was amended to allow the Law Enforcement Training and Standards Board to conduct training programs on the methods and technical aspects of conducting electronic recording of interrogations. The Juvenile Court Act (705 Ill. Comp. Stat. 405/5-401.5) was amended to permit the electronic recording of statements made by minors in homicide investigations. The Criminal Code (Eavesdropping 720 Ill. Comp. Stat. 5/14-3 k) was amended to allow the electronic recording of a custodial interrogation in a homicide investigation without the consent of all parties to the conversation.

<sup>viii</sup> 720 Ill. Comp. Stat. 5/9-1.

<sup>ix</sup> 720 Ill. Comp. Stat. 5/9-1.

<sup>x</sup> 720 Ill. Comp. Stat. 5/9-1.

<sup>xi</sup> 720 Ill. Comp. Stat. 5/9-1.

<sup>xii</sup> 720 Ill. Comp. Stat. 5/9-1.



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- xiii 720 Ill. Comp. Stat. 5/9-1i.
- xiv 720 Ill. Comp. Stat. 5/115-21.
- xv 725 Ill. Comp. Stat. 5/107A-5.
- xvi 725 Ill. Comp. Stat. 5/114-13.
- xvii 725 Ill. Comp. Stat. 5/114-15.
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- xxxi Sheri Mecklenburg, Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures (Mar. 17, 2006) unpublished manuscript.
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- xxxiv Minutes of the Capital Punishment Reform Study Committee 7 December 2009.
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- xxxvi Technical problems reported include equipment failure, audio and video malfunctions, loss of digital images, incompatibility with police department equipment, power failure, and user error.
- xxxvii Illinois Rules of Criminal Proceedings in the Trial Court Article 4 Section 416 (c)
- xxxviii 720 Ill. Comp. Stat. 5/9-1 (c) (6) and (7)
- xxxix 720 Ill. Comp. Stat. 5/9-1 (6) (c)
- xl Governor's Commission on Capital Punishment 51-60.
- xli Three Cleared by DNA Tests Enjoy Liberty After 15 Years, *New York Times*, Dec. 6, 2001.
- xlii Minutes of the Capital Punishment Reform Study Committee 7 Jul. 2009.
- xliii Governor's Commission on Capital Punishment 131-133.
- xliv Illinois Supreme Court Rules 416 (f).
- xlv 720 Ill. Comp. Stat. 5/9-1 h 5
- xlvi 725 Ill. Comp. Stat. 5/115-21
- xlvii Governor's Commission on Capital Punishment 105.