

STATE OF COLORADO

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D 2013-006



John W. Hickenlooper
Governor

EXECUTIVE ORDER

DEATH SENTENCE REPRIEVE

Pursuant to the authority vested in the Governor of the State of Colorado by Article IV, Section 7 of the Colorado Constitution, which gives to the Governor the authority to grant reprieves, commutations and pardons, and Section 18-1.3-1202 of the Colorado Revised Statutes, which provides that the Governor may for good cause prolong the time of an execution, I, John W. Hickenlooper, Governor of the State of Colorado, hereby issue this Executive Order granting Nathan J. Dunlap a temporary reprieve from his death sentence.

I. Background

There are three individuals in Colorado who are currently on death row. One of those individuals, Nathan J. Dunlap, Colorado Department of Corrections Offender Number 89148 ("Offender No. 89148"), has exhausted all of his legally guaranteed appeals in connection with his four first-degree murder convictions. On May 1, 2013, the District Court in Arapahoe County issued a warrant for his execution setting the date to fall within the week beginning Aug. 18, 2013, and ending Aug. 24, 2013. On May 6, 2013, legal counsel for Offender No. 89148 submitted a petition for executive clemency.

Capital punishment is rarely used in Colorado. There has been only one legal execution in Colorado since 1967. It occurred in 1997, more than 15 years ago. This State is not regularly asked to consider the propriety of carrying out death sentences, nor is the State readily equipped with the drugs to carry out such sentences. Colorado has not possessed the statutorily required drugs since the last execution in 1997 because the drugs have a limited shelf life and we have not had a scheduled execution. The challenge of implementing a death sentence is compounded by the fact that the people of Colorado, and their elected representatives, are divided on the question of whether a punishment of death or a punishment of life in prison without the possibility of parole should be the maximum penalty for criminals in Colorado. This debate was evident during the 2013 legislative session when a bill was introduced to repeal the death penalty. I discouraged passage of such legislation because repeal of the death penalty ought to be raised with the people of Colorado and not just their elected representatives. It is likely that my decision in this case will continue the intense conversation Coloradans are having about the death penalty.

For the reasons stated below, I am granting Offender No. 89148 a reprieve from his death sentence.

II. Basis for Granting Reprieve

The Colorado Constitution provides for one final review by the governor before the State executes a human being. This check is one that, from its Common Law origins, embeds in the governor the authority to grant a reprieve. I have taken this responsibility seriously. As Governor, I must either direct state employees to execute a human being, or I must exercise my constitutional authority to stop an execution. Both paths require an affirmative decision by me, and the prospect of either decision has been daunting. It has forced me to think of the issue in a personal way because it is on my conscience the decision will weigh. I am confident that most Coloradans – no matter what their views on the death penalty may be – will respect and understand the unique burden of this decision.

We have met most recently with prosecutors, clergy, victims and their families, law enforcement, defense attorneys and countless other people on all sides of this issue. It is clear that reasonable people disagree strongly on the benefit of having death as the ultimate punishment. All those who debate this subject agree, however, on the finality of this punishment. Once an inmate is executed, that decision cannot be reversed.

If the State of Colorado is going to undertake the responsibility of executing a human being, the system must operate flawlessly. Colorado's system for capital punishment is not flawless. A recent study co-authored by several law professors showed that under Colorado's capital sentencing system, death is not handed down fairly. Many defendants are eligible for capital punishment but almost none are actually sentenced to death. The inmates currently on death row have committed heinous crimes, but so have many others who are serving mandatory life sentences.

We heard of many cases similar to the Chuck E. Cheese shooting, wherein defendants received mandatory life sentences rather than death. In one case, an escapee from Canyon City murdered four people and was sentenced to consecutive life sentences. In yet another case, a man was sentenced to consecutive life sentences for lying in wait to kill his wife, a neighbor, and the neighbor's two sons. In a third case, a defendant was sentenced to mandatory life in prison without parole for breaking into an apartment, tying up four teenagers, and killing three of the four. The fourth teenager survived, but was left a paraplegic from the bullet wounds.

The fact that those defendants were sentenced to life in prison instead of death underscores the arbitrary nature of the death penalty in this State, and demonstrates that it has not been fairly or equitably imposed. As one former Colorado judge said to us, “[The death penalty] is simply the result of happenstance, the district attorney's choice, the jurisdiction in which the case is filed, perhaps the race or economic circumstance of the defendant.” Indeed, “Death, in its

finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two,” U.S. Supreme Court Justices Stewart, Powell, and Stevens wrote in a 1976 decision. Thus, they said, “there is a corresponding difference in the need for reliability.”

My decision to grant a reprieve to Offender No. 89148 is not out of compassion or sympathy for him or any other inmate sentenced to death. The crimes are horrendous and the pain and suffering inflicted are indescribable. I have enormous respect for the jurors who deliberated over Offender No. 89148’s case, the decision they rendered, and the amount of reflection they demonstrated in discharging their civic duty. That said, more than 15 years have passed since that jury convened, and we now have the benefit of information that exposes an inequitable system. It is a legitimate question whether we as a state should be taking lives. Because the question is about the use of the death penalty itself, and not about Offender No. 89148, I have opted to grant a reprieve and not clemency in this case.

Many other states and nations have come to the conclusion that the death penalty does not work. Maryland, Connecticut, New Jersey, Illinois and New Mexico recently repealed the death penalty. There are now 18 states without the death penalty and 7 of the states with the death penalty (including Colorado) have not carried out an execution in at least 10 years. There has been a moratorium on executions in California for more than 6 years due to concerns regarding the constitutionality of their execution procedures. And the death penalty is effectively suspended in Oregon, where the governor has imposed a moratorium on the death penalty for the duration of his service as governor. Internationally, the United States is one of only a handful of developed countries that still uses the death penalty as a form of punishment. Approximately two-thirds of countries worldwide have abolished the death penalty in law or in practice, largely due to concerns regarding human rights violations. As U.S. Supreme Court Justice Harry A. Blackmun said, “The death penalty experiment has failed.”

Most major religions of the world do not support the death penalty. We heard from the Colorado Council of Churches, which represents more than 850 Colorado churches; 19 Rabbis representing various Colorado synagogues; Archbishop Samuel J. Aquila on behalf of the Archdiocese of Denver; Pastor Patrick L. Demmer of the Greater Metro Denver Ministerial Alliance; The Mountain View Friends Meeting; Bishop James Gonia, the Rocky Mountain Synod, Evangelical Lutheran Church in America; and the Interfaith Alliance of Colorado, representing more than 1,200 members from 19 different faith backgrounds. These groups advocated for clemency.

Finally, as a result of the infrequent use and application of the death penalty in Colorado, the State is not immediately equipped to carry out a death sentence. Recent restrictions imposed by pharmaceutical companies and the Food and Drug Administration make procuring these drugs challenging. We must ensure that individuals facing the death penalty are afforded certain

guaranteed rights of due process before a state proceeds with an execution.

I once believed the death penalty had value as a deterrent. Unfortunately, people continue to commit these crimes in the face of the death penalty. The death penalty is not making our world a safer or better place.

Ordering the death of another human being would weigh heavily on any person's conscience. Some victims' families have said that only an execution will bring closure and a sense of justice. Other victims' families say they seek a different kind of closure – one that does not involve an execution. Nothing we do can bring their loved ones back. Some grief is so deep that it never completely disappears. My staff and I are intensely grateful for these families' willingness to share their stories.

III. Finding of Good Cause for Reprieve From Death Sentence

In furtherance of all the principles articulated above, I find that there is good cause to grant Offender No. 89148 a reprieve from his death sentence. As a result of this decision, he will remain in administrative segregation.

This Executive Order shall remain in full force and effect until modified or rescinded by future Executive Order of the Governor.



GIVEN under my hand and the
Executive Seal of the State of
Colorado this twenty-second
day of May, 2013.

A handwritten signature in blue ink, which reads "John W. Hickenlooper". The signature is fluid and cursive, written over the printed name.

John W. Hickenlooper
Governor