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## A new death penalty? More problems?

**G**ov. Bruce Rauner recently announced two significant criminal justice proposals. He called for bringing back the death penalty for multiple murders and for murder of a police officer but required proof beyond “all doubt” before the death sentence could be imposed.

The death penalty has been the subject of intense debate in Illinois over a number of years, culminating in a vote by the state legislature several years ago to abolish capital punishment. In May, the governor raised the issue again, in the midst of his re-election campaign, as part of a package of amendatory vetoes to a pending bill, rather than as a stand-alone proposition.

Whatever your view of the death penalty, it is without doubt a critical criminal justice issue that deserves to be debated and decided on its own merits, rather than as part of a veto package covering multiple issues.

Equally puzzling is that the governor calls for the reimposition of the death penalty, but couples that with a new standard of proof — “beyond all doubt” — before a sentence of death can be imposed.

At first glance the “beyond all doubt” standard might seem to speak for itself, but the proposal actually raises a number of issues.

The standard in criminal cases has historically been “beyond a reasonable doubt.” Some states, including Illinois, do not define the term for jurors, while others do. Whether defined or not, it is

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the highest burden of proof in our legal system and has been applied by our trial and appellate courts in thousands of cases.

Even though it is a high standard, the use of “reasonable” calls for a doubt that is more than a vague feeling and is the result of discussion among all the jurors.

Removing “reasonable” from “reasonable doubt” implies that any single juror may have nothing

heightened burden of proof in trying to convict the defendant. This results in the strange situation of making it harder to bring to justice defendants being tried for crimes that are among the most reprehensible.

The other approach is to apply “beyond a reasonable doubt” at the guilt phase and “no doubt” at the penalty phase. If the defendant is found guilty, the jury is then faced with the question of what level of “doubt” is left after “beyond a reasonable doubt.” Obviously, jurors may be confused by the use of the two standards.

Beyond that, this process introduces a completely new burden of proof to the criminal justice process, one that, unlike the long-used “reasonable doubt” standard, is untested and undefined by the courts.

Finally, the use of the “beyond all doubt” standard invites jurors to take a position based on any type of feeling about the case or the death penalty without any sense of obligation to confer with their fellow jurors over the point.

The real-life effect of all this may well be that the governor will have created a campaign issue that, if adopted, will not have any meaningful impact on the criminal justice system.

What the proposal offers on the one hand, the limited return of the death penalty, is taken away by adoption of a new, untested standard of proof that will make such prosecutions more difficult.

Those who have lost a loved one to violent crime deserve better. In fact, we all deserve better.

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more than some vague sense of unease, whatever its source, and have no obligation to confer with fellow jurors about it.

There are additional questions relating to the implementation of the proposed standard. Death penalty cases have a guilt phase and a penalty phase.

In the first, the jury decides whether the defendant is guilty of the crime charged.

In the second, the jury decides whether the defendant qualifies for the death penalty and, if so, whether that penalty should be imposed in the particular case.

If the “beyond all doubt” standard is applied at the guilt phase, prosecutors have to face this