

ARIZONA'S DEATH PENALTY PROBLEMS AND RECOMMENDATIONS

As a society, we must do all we can to ensure a fair and accurate system for every person who faces the death penalty. When a life is at stake, there simply is no room for error or injustice. In 2006, the Arizona Death Penalty Assessment Team, working with the American Bar Association, found that Arizona's death penalty is plagued with serious problems. The team recommended a number of reforms that would help to improve the fairness and accuracy of the system. Until these reforms are implemented, the ABA urges that Arizona impose a temporary moratorium on executions.

1. ALL POOR DEFENDANTS RECEIVE COMPETENT LAWYERS AT EVERY STAGE OF THE CAPITAL PROCESS.

In the United States, criminal defendants who are poor are entitled to attorneys. Arizona's system does not ensure, however, that poor defendants on trial for their lives will receive a competent one. Arizona's various indigent defense services combine to form a mixed and uneven system that lacks oversight and fails to provide uniform, quality representation to indigent defendants in all capital proceedings. The State's failure to provide statewide oversight of its indigent defense system (with the exception of the newly formed state capital post-conviction public defender office) leads to a system in which fairness and accuracy breakdowns are not only possible, but likely. Even worse, Arizona has not even conducted the research necessary to identify the scope of the problem, no less identify solutions. As a first step, Arizona should conduct a study of Maricopa County's four indigent defense offices to determine if the apparent discrepancies in average expenditures on capital cases are problematic and signal differences in the quality of representation.

2. ARIZONA SHOULD PROTECT INNOCENT DEATH ROW INMATES BY PROVIDING ADEQUATE FUNDING FOR AND OVERSIGHT OF CRIME LABS AND FORENSIC INVESTIGATIONS.

Crime labs and forensic investigations should be adequately funded so that biological evidence may be tested quickly and accurate determinations as to likely guilt or innocence may be made as early in the investigation process as possible. In addition, to further ensure the reliability and credibility of crime labs and to minimize the risk that wrongful convictions occur, Arizona should create an independent agency to oversee its crime laboratories.

3. ARIZONA SHOULD PROTECT AGAINST ARBITRARINESS IN CAPITAL SENTENCING.

Ensuring proportionality is the best way to protect against arbitrariness in capital sentencing. Currently, however, Arizona does not have adequate safeguards in place to ensure that the system is proportional. The Arizona Death Penalty Assessment Team believes that a capital case review committee housed in the Arizona Prosecuting Attorneys' Advisory Council should exercise final discretion as to whether the death penalty should be sought. The County Attorney may choose not to seek death, but if s/he wants capital charges to be filed, a

capital case review committee must make the final decision as to the appropriateness of capital charges.

Alternatively, the Arizona Supreme Court should conduct a comparative proportionality review during the direct appeal stage of capital cases in which it compares the death sentence under review with sentences imposed on similarly situated defendants. This sort of review should compare the case under consideration to similar cases in which (1) death was imposed, (2) death was sought but not imposed, and (3) death could have been sought but was not.

Furthermore, unless and until the Arizona Prosecuting Attorneys' Advisory Council creates the capital case review committee recommended above, Arizona should require that all prosecuting agencies involved in capital case prosecutions have written policies for identifying cases in which to seek the death penalty. As recommended by the Arizona Capital Case Commission, these policies should require the solicitation or acceptance of defense input before deciding whether or not to seek the death penalty.

4. ARIZONA SHOULD COLLECT AND ANALYZE THE DATA THAT IS NECESSARY TO DETERMINE WHETHER ITS DEATH PENALTY SYSTEM IS FAIR AND ACCURATE.

Pursuant to the Arizona Capital Case Commission recommendation about the importance of continued data collection, the State of Arizona should establish and fund a clearinghouse to collect data on first-degree murder cases. At a minimum, this clearinghouse should collect data on each county's provisions of defense services in these cases. Relevant information on all death-eligible cases should be made available to the Arizona Supreme Court for use in any proportionality review it may conduct.

Additionally, Arizona should provide funding for the completion and public release of a study of the administration of its death penalty system to determine the existence or non-existence of unacceptable disparities, socio-economic, racial, geographic, or otherwise.

5. ARIZONA SHOULD EFFECTIVELY LIMIT ITS "ESPECIALLY HEINOUS, ATROCIOUS, OR DEPRAVED" AGGRAVATING CIRCUMSTANCE.

An ambiguous, overly broad aggravating circumstance can lead to arbitrariness in capital sentencing. In 2002, the Arizona Capital Case Commission expressed concerns regarding the ambiguity of the (F)(6) statutory aggravating circumstance (a murder committed in an "especially cruel, heinous or depraved manner"), but no changes have been made yet. Given the inherent vagueness of this aggravating circumstance and the possibility of overuse, it is of utmost importance that Arizona adopts a uniform and specific definition of this aggravating circumstance when instructing jurors during the aggravation phase of a capital trial.

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