

INDIANA'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. The Indiana Death Penalty Assessment Team, working with the American Bar Association, found that Indiana's death penalty is plagued with serious problems. The team recommends a number of reforms that would help to improve the fairness and accuracy of the system. While these reforms are being implemented, Indiana should temporarily suspend executions.

1. INDIANA SHOULD ENSURE THAT IT PROVIDES ADEQUATE OPPORTUNITIES FOR DEATH ROW INMATES TO PROVE THEIR INNOCENCE.

Indiana does several things that increase the possibility that it might execute an innocent person. For example, the state does not require that DNA evidence be preserved for as long as the inmate is incarcerated, thereby raising the specter of evidence being destroyed before tests proving innocence have been conducted. Unless a defendant has knowingly and voluntarily waived his or her claims, the Indiana Supreme Court should allow death row inmates to raise significant claims of error during post-conviction proceedings.

2. INDIANA SHOULD EXEMPT PEOPLE WITH SEVERE MENTAL DISABILITIES FROM THE DEATH PENALTY.

The State of Indiana has a significant number of people with severe mental disabilities on death row, some of whom were disabled at the time of the offense and others of whom became seriously ill after conviction and sentence. Although the State of Indiana excludes individuals with mental retardation from the death penalty, it does not explicitly exclude individuals with other types of serious mental disorders from being sentenced to death and/or executed.

3. INDIANA SHOULD ENSURE THAT ALL CAPITAL DEFENDANTS AND DEATH ROW INMATES WHO ARE POOR RECEIVE COMPETENT LAWYERS.

In the United States, criminal defendants who are poor are entitled to attorneys. Although Indiana does provide indigent defendants with counsel at trial, on direct appeal, and in state post-conviction proceedings, the State does not have the safeguards in place to ensure that defendants and death row inmates who are poor receive an attorney who can competently represent them.

For example, Indiana does not have one statewide independent appointing authority that trains, selects, and monitors attorneys who represent indigent

individuals charged with or convicted of capital crimes; this increases the possibility that attorneys will be appointed or retained for reasons other than their qualifications. Nor does Indiana require any type of performance review once an attorney has been appointed, making it difficult to ensure that incompetent lawyers stop being appointed to capital cases.

To address these problems, Indiana should create an independent appointing authority, made up solely of defense lawyers, which would be responsible for appointing at least two attorneys at every stage of a capital case. In addition, the State of Indiana should adopt increased capital attorney qualification and monitoring procedures, as well as strict workload limits, to be consistent with the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*.

4. INDIANA SHOULD PROTECT AGAINST ARBITRARINESS IN CAPITAL SENTENCING.

Comparative proportionality review is the best way to ensure that the death penalty is reserved for the “worst of the worst.” Currently, however, Indiana does not have adequate safeguards in place to make sure that its system is proportional.

5. INDIANA SHOULD ELIMINATE BIAS IN ITS DEATH PENALTY SYSTEM.

The Indiana Criminal Law Study Commission’s 2002 report found that those convicted of killing white victims are sentenced more severely than those convicted of killing non-white victims. The ABA’s racial disparity study backs up the Criminal Law Study Commission’s findings. The State of Indiana should complete and release its ongoing study to determine the existence or non-existence of unacceptable disparities, whether they be racial, socio-economic, geographic, or otherwise in its death penalty system.

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