

OHIO'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 is no room for error or injustice. The Ohio Death Penalty Assessment Team, working with the American Bar Association, has found that Ohio'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 Ohio's system. Until these reforms are implemented, Ohio should temporarily suspend executions.

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

Since 1973, the State of Ohio has exonerated five death row inmates and at least one additional person with strong claims of innocence remains on death row. Despite these exonerations, the State of Ohio has not implemented a number of requirements that would make the conviction of an innocent person much less likely, including requiring the preservation of biological evidence for as long as the defendant remains incarcerated, requiring that crime laboratories and law enforcement agencies be certified by nationally recognized certification organizations, requiring the audio or videotaping of all interrogations in potentially capital cases, and implementing lineup procedures that protect against incorrect eyewitness identifications.

In addition to making these necessary reforms, the Governor of Ohio should create a commission, with the power to conduct investigations, hold hearings, and test evidence, to review claims of factual innocence in capital cases. This sort of commission, which would supplement the clemency process, is necessary, in large part because current procedural defaults and inadequate lawyering have prevented claims of factual innocence from receiving full judicial consideration and the clemency process currently is not equipped to handle them.

2. OHIO 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 Ohio 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. There are a number of reasons for this, including that (1) the State falls far short of the qualification and training requirements set out in the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* for trial and appellate attorneys; (2) attorneys handling capital cases and appeals often are not compensated at a rate that is commensurate with the provision of high quality legal representation; and (3) attorneys often are provided insufficient access to experts and investigators or to information in discovery.

The State of Ohio should adopt increased attorney qualification and monitoring procedures for capital attorneys at trial and on appeal and qualification standards for capital attorneys in state post-conviction and any other related proceedings so that they are consistent with the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (ABA Guidelines).

3. OHIO SHOULD EXEMPT PEOPLE WITH SEVERE MENTAL DISABILITIES FROM THE DEATH PENALTY.

The State of Ohio 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 Ohio 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.

4. OHIO SHOULD ELIMINATE RACIAL AND GEOGRAPHIC BIAS FROM ITS DEATH PENALTY SYSTEM.

While there has been recognition that racial and geographic disparities may be present in Ohio's capital system, including by The Ohio Commission on Racial Fairness and the Associated Press, Ohio has not studied the issue of racial and geographic bias in capital sentencing or implemented reforms designed to help eliminate the impact of race and geography on capital sentencing. In an attempt to quantify the problem, the ABA, as part of its assessment, conducted a racial and geographic disparity study which looked at death sentences in Ohio between 1981-2000 and found that those who kill Whites are 3.8 times more likely to receive a death sentence than those who kill Blacks and that the chances of a death sentence in Hamilton County are 2.7 times higher than in the rest of the state, 3.7 times higher than in Cuyahoga County, and 6.2 times higher than in Franklin County.

5. OHIO SHOULD PROVIDE INCREASED DISCOVERY IN STATE POST-CONVICTION.

Despite the fact that a death-sentenced inmate must allege all available grounds for relief and state the specific facts that support those grounds for relief prior to obtaining an evidentiary hearing in state post-conviction, the State of Ohio denies petitioners access to the discovery procedures necessary to develop post-conviction claims. This is exacerbated by the fact that Ohio statutes and case law prohibit a petitioner from using the public records laws to obtain materials in support of post-conviction claims in spite of the fact that anyone else, including reporters can and do obtain these documents. Furthermore, it appears that should the petitioner somehow obtain evidence in support of his or her claims through the public records process, the records cannot then be offered as attachments in support of his or her post-conviction petition.