July 3, 2018

The Honorable Lisa M. Boscola  The Honorable Daylin B. Leach
Pennsylvania State Senate  Pennsylvania State Senate
Senate Box 203018  Senate Box 203017
Harrisburg, PA 17120-3018  Harrisburg, PA 17120-3017

The Honorable Stewart J. Greenleaf  The Honorable John C. Rafferty, Jr.
Pennsylvania State Senate  Pennsylvania State Senate
Senate Box 203012  Senate Box 203044
Harrisburg, PA 17120-3012  Harrisburg, PA 17120-30

Dear Members of the Pennsylvania Task Force on Capital Punishment:

The American Bar Association applauds the recent report of the Task Force and Advisory Committee of the Joint State Government Commission on Capital Punishment In Pennsylvania (Report). The ABA appreciates the Commission’s extensive efforts to research a broad spectrum of topics related to the state’s capital punishment system and for the inclusion of diverse perspectives on the Advisory Committee that included judges, former prosecutors, defense lawyers, academics, victims’ rights advocates, and clergy.

The Commission’s bipartisan Report builds upon and validates the work of prior studies, including the ABA’s 2007 Pennsylvania Death Penalty Assessment Report (available at https://www.americanbar.org/content/dam/aba/migrated/moratorium/assessmentproject/pennsylvania/finalreport.authcheckdam.pdf). While the ABA takes no position for or against the death penalty per se, it has recommended a moratorium on executions in states that fail to safeguard due process in capital cases until such protections can be implemented. The ABA’s 2007 assessment found systemic deficiencies in a number of critical areas and concluded that “Pennsylvania cannot ensure that fairness and accuracy are the hallmark of every case in which the death penalty is sought or imposed.”

Like the ABA’s assessment in 2007, the Report found serious deficiencies in a number of areas, including Pennsylvania’s current county-by-county indigent defense system, concluding that the lack of statewide oversight has been at least partially responsible for the appointment of counsel who fail to meet professional standards. The ABA has long recognized that appointment of unqualified counsel leads to wrongful convictions, unconstitutional death sentences, and violations of fundamental constitutional rights, as well as impairs the effective functioning of the system and increases the strain on already
limited judicial resources. The Report demonstrates the impact of this lack of oversight, finding that 150 Pennsylvania death sentences have been overturned due to ineffective assistance of counsel. Effective defense lawyers are also critical to preventing and addressing many other issues identified by the Report as problematic in Pennsylvania’s capital punishment system; racial bias and execution of the intellectually disabled or severely mentally ill are important examples.

The ABA supports the Report’s call for a state-funded capital defender office to directly represent indigent defendants charged with or convicted of capital crimes at all stages of litigation in state court. This is consistent with both the ABA’s 2007 recommendation and the ABA’s Guidelines for the Appointment & Performance of Defense Counsel in Death Penalty Cases (available at http://ambar.org/2003guidelines). We appreciate the Report’s endorsement of the ABA Guidelines and its recommendation of this and other important changes consistent with the Guidelines that would help to ensure the provision of effective representation. The creation of such an office would be a critical step toward improving fairness and accuracy in Pennsylvania capital cases.

The Report unfortunately confirms that the issues identified by the ABA in 2007 have persisted over the past 11 years. And those issues continue, jeopardizing the fair administration of justice in capital cases in Pennsylvania. The ABA strongly urges the Commonwealth to implement the recommendations made by the Report and, consistent with the 2007 ABA assessment, to maintain the moratorium on executions until these due process protections are in place.

Thank you for your important efforts to study and improve the criminal justice system in Pennsylvania.

Sincerely,

Hilarie Bass