

# **ALABAMA'S DEATH PENALTY SYSTEM IDENTIFICATION OF PROBLEMS AND RECOMMENDATIONS FOR REFORM**

**Regardless of one's feelings about the morality of the death penalty, we all understand that, 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, we cannot tolerate error or injustice. The Alabama Death Penalty Assessment Team found a number of problems in the state's death penalty system that undermines its fairness and accuracy. Highlighted below are proposed areas for reform that would help to improve the system. Until these reforms are implemented, a temporary moratorium on executions should be imposed.**

**1. ALABAMA SHOULD ENSURE THAT ALL POOR DEFENDANTS RECEIVE COMPETENT COUNSEL AT EVERY STAGE OF THE CAPITAL PROCESS.**

In the United States, poor criminal defendants are entitled to attorneys, and while the availability and quality of defense counsel is central to a fair and accurate death penalty system, capital defendants in Alabama too often do not receive the full benefit of this Constitutional guarantee. The State's failure to provide statewide oversight of its indigent defense system, combined with the minimal qualifications and non-existent training required of attorneys who represent capital defendants, leads to a system where serious fairness and accuracy breakdowns are virtually inevitable. Alabama should create a statewide indigent defense commission to help fix these problems.

Compounding this problem, Alabama is one of only two states that does not even guarantee a lawyer in the state post-conviction portion of the death penalty process, *even if the inmate might have new evidence of innocence.*

**2. ALABAMA SHOULD PROTECT INNOCENT DEATH ROW INMATES BY PROVIDING A CLEAR METHOD TO OBTAIN DNA TESTING.**

DNA has proven to be an enormously useful law enforcement tool for proving both guilt and innocence, but Alabama has failed to pass a law that ensures access to DNA testing for people convicted of capital crimes. Additionally, Alabama does not require that biological evidence be preserved throughout the capital inmate's incarceration, thereby enabling the potential destruction of evidence that could be used to prove innocence.

**3. ALABAMA SHOULD ENSURE THAT MENTALLY RETARDED DEFENDANTS ARE PROTECTED FROM UNCONSTITUTIONAL EXECUTION.**

In accordance with United States Supreme Court case law banning the execution of offenders with mental retardation, twenty-six states have adopted statues prohibiting this practice. Alabama is not one of them. Consequently, and despite repeated pleas from judges in the state, courts have been forced to cobble together stopgap standards and procedures to comply with the United States Supreme Court decision. The Legislature's abdication of its responsibilities in this area has resulted in the legitimate risk that Alabama might continue to execute mentally retarded offenders.

**4. ALABAMA SHOULD PROVIDE JURIES WITH RESPONSIBILITY FOR SENTENCING DECISIONS.**

Alabama should strengthen the jury's role in capital sentencing by eliminating "judge override," the rule that allows judges to disregard juries' sentencing recommendations. Judge override diminishes jurors' sense of responsibility for the enormous life and death decision they must make, and results in jurors paying less attention to jury instructions and deliberating for less time. All of this can result in unfairness and inaccuracy. In addition to eliminating judge override, Alabama should require juries to be unanimous in recommending a death sentence. Bottom line: Alabama should respect the ability of juries to "get it right."

**5. ALABAMA SHOULD RESERVE THE DEATH PENALTY FOR THE "WORST OF THE WORST."**

Meaningful proportionality review is the best method of protecting against unfairness in capital sentencing. 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. In conducting its proportionality review, however, the Alabama Court of Criminal Appeals limits itself to cases where the death penalty was imposed, thereby increasing the likelihood of unfair death sentences.

**6. ALABAMA SHOULD COLLECT AND STUDY THE DATA NECESSARY TO FULLY UNDERSTAND HOW ITS SYSTEM IS FUNCTIONING.**

It is imperative to have thorough and accurate information when gauging the health of Alabama's capital system. Unfortunately, Alabama does not collect and/or make available the data that is necessary to understand whether the death penalty is being applied fairly and accurately. In fact, the ABA could not even answer whether Alabama met or failed to meet 14 of the 80 recommendations contained in the assessment report.