

## **FLORIDA'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. In September 2006, the Florida Death Penalty Assessment Team, working with the American Bar Association, found a number of serious problems in Florida's death penalty system. The team recommended a number of reforms that would help to improve the fairness and accuracy of the system.**

### **1. FLORIDA SHOULD PROTECT INNOCENT DEATH-ROW INMATES BY INVESTIGATING FLORIDA'S WRONGFUL CONVICTIONS AND BY PREVENTING SIMILAR INJUSTICES IN THE FUTURE.**

Florida leads the nation in death-row exonerations. Since 1973, the State of Florida has exonerated twenty-two death-row inmates, significantly more than any other state. Combined, these death-row inmates served approximately 150 years in prison before being released; one died of cancer prior to being exonerated. Florida executed sixty death-row inmates during this same time period, resulting in over one exoneration for every three executions.

Because of the high number of exonerations in Florida, the State should create two independent commissions in order to: (a) establish the cause of wrongful convictions in capital cases and recommend changes to prevent future wrongful convictions in these cases; and (b) review claims of factual innocence in capital cases that, if sustained, would be reviewed by a panel of judges.

### **2. FLORIDA SHOULD ENSURE THAT ALL CAPITAL DEFENDANTS RECEIVE ADEQUATELY COMPENSATED LAWYERS DURING TRIAL**

The State of Florida has in place a statutory fee cap of \$3,500 for conflict trial counsel in death penalty cases. Moreover, conflict trial counsel are usually ineligible for compensation until the final disposition of the case, unless they have been providing legal services on the case for more than one year. The statutory fee cap, even if it may be exceeded in "extraordinary and unusual cases," and the failure to regularly provide for partial payments, have the potential to dissuade the most experienced and qualified attorneys from taking capital cases and may preclude those attorneys who do take these cases from having the funds necessary to present a vigorous defense.

The State of Florida should take steps to ensure that all conflict trial counsel in death penalty cases are properly compensated. Specifically, the State of Florida should eliminate the statutory fee cap and allow greater flexibility for obtaining interim payments for services.

### **3. FLORIDA SHOULD ENSURE THAT ALL DEATH SENTENCED INMATES RECEIVE PROPERLY QUALIFIED AND COMPENSATED LAWYERS DURING STATE POST-CONVICTION PROCEEDINGS.**

The Florida statutory qualification requirements are insufficient to ensure qualified counsel for every death-sentenced inmate. Registry attorneys need only minimal trial and/or appellate experience to qualify for appointment and are not adequately monitored. These shortcomings have not gone unnoticed; Florida legislators and Florida Supreme Court Justices have criticized the performance of registry attorneys on a number of occasions, including Florida Supreme Court Justice Raoul Cantero's testimony that the representation provided by registry attorneys is "[s]ome of the worst lawyering" he has ever seen.

The State of Florida should take steps to ensure that all death-sentenced inmates receive qualified and well monitored attorneys by adopting qualification standards and monitoring procedures for capital collateral registry attorneys that are consistent with the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. In the alternative, it should reinstitute the Capital Collateral Regional Counsel Office in the Northern Region of Florida, thereby eliminating reliance on registry counsel in non-conflict cases.

**3. FLORIDA SHOULD REQUIRE JURIES TO MAKE THE ULTIMATE SENTENCING DECISION.**

Florida's failure to require jury unanimity when recommending a death sentence, in addition to the state's practice of allowing judge's to override jury sentencing recommendations, diminishes jurors' sense of responsibility for the enormous life and death decisions that they must make, resulting in jurors paying less attention to jury instructions and deliberating for less time. All of this can result in unfairness and inaccuracy in capital sentencing.

Florida should strengthen the role of juries in capital sentencing by requiring the jury's sentencing verdict to be unanimous and eliminating the practice of judicial override where the jury recommends life imprisonment without the possibility of parole.

**4. FLORIDA SHOULD ENSURE THAT ITS CLEMENCY PROCESS IS TRANSPARENT AND OPEN.**

Full and proper use of the clemency process is essential to guaranteeing fairness in the death penalty system, but Florida's clemency process is full of ambiguity and secrecy. Given the ambiguities and confidentiality surrounding Florida's clemency decision-making process and the fact that clemency has not been granted to a death-sentenced inmate since 1983, it is difficult to conclude that Florida's clemency process is adequate. For example, the Board of Executive Clemency is not required to hold a public hearing to consider an inmate's claims or provide reasons for denying clemency and the factors considered by the Board are largely undefined.

To increase the transparency and openness of the clemency process, Florida's Board of Executive Clemency should, among other things, issue a brief written statement in every instance wherein a death-sentenced inmate is denied clemency, making specific reference to the various factors/claims that the Board may have considered; identify the factors that the Board should consider, but not be limited to, when reviewing a death-sentenced inmate's grounds for clemency; and establish that a death-sentenced inmate will receive a public hearing before the Board prior to the clemency determination.

**5. FLORIDA SHOULD COLLECT AND ANALYZE DATA THAT IS NECESSARY TO DETERMINE WHETHER ITS DEATH PENALTY SYSTEM IS FAIR AND ACCURATE.**

In 1991, a Florida Supreme Court study commission found that "the application of the death penalty in Florida is not colorblind." Almost ten years later, the Governor's Task Force on Capital Cases made a number of recommendations for reform, which attempt to eliminate racial bias in Florida's capital punishment system, however, the majority of these recommendations have not been implemented.

The State of Florida should sponsor a study of its death penalty system to determine the existence or non-existence of unacceptable disparities, whether they be racial, socio-economic, geographic, or otherwise.

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