

## PROBLEMS WITH GEORGIA'S DEATH PENALTY SYSTEM & 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 Georgia Death Penalty Assessment Team has found a number of problems in the state's death penalty system. Below, we identify some of Georgia's most significant problems and propose reforms that could help to improve the fairness and accuracy of the system.*

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**PROBLEM: Inadequate Funding for Defense Counsel** – Too often, the amount of money a defendant has determines the quality of counsel he or she will receive. Although Georgia recently instituted a statewide capital defender office (GCD) in an attempt to provide competent counsel to indigent defendants, it is unclear whether the funding will be provided to enable it to function as planned. The GCD budget includes funds for 40 death penalty cases and 9 conflict cases, for a total of 49 cases per year. As of early December 2005, 47 capital prosecutions had begun. In addition to the cases beginning in 2005, there were 12 capital cases already in the trial stage in which the GCD represents the defendant.

**REFORM: Georgia should ensure that all indigent defendants receive competent counsel by providing funding for the full cost of high quality legal representation by the defense team and selected experts.**

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**PROBLEM: Lack of Defense Counsel for State Habeas** – The availability and quality of defense counsel at every stage of the proceedings is central to a fair and accurate death penalty system. With the exception of Alabama, Georgia is the only state that does not provide counsel in state habeas proceedings to indigent defendants sentenced to death.

**REFORM: To help ensure that all capital defendants receive adequate representation, Georgia should provide them with at least two attorneys in state habeas proceedings.**

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**PROBLEM: Racial Disparities in Capital Sentencing** - Race clearly matters in capital sentencing in Georgia. Both the race of the defendant and the race of the victim are predictors of who is sentenced to death in Georgia, with white suspects and those who kill white victims more likely to be sentenced to death than black suspects and those who kill black victims. Specifically, “[t]he data show that among all homicides with known suspects, those suspected of killing whites are 4.56 times as likely to be sentenced to death as those who are suspected of killing blacks.”

**REFORM: In recognition that race should not play a role in death sentencing, Georgia should fully investigate and evaluate the racial disparities in its death penalty system and develop strategies that strive to eliminate them.**

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**PROBLEM: Inappropriate Burden of Proof for Mentally Retarded Defendants** – As a country, we have determined that execution of the mentally retarded is cruel and unusual punishment. Of the 26 states that have adopted statutes prohibiting the execution of the mentally retarded, Georgia is the only state that requires the defendant to prove his/her mental retardation beyond a reasonable doubt.

**REFORM: To help ensure that Georgia does not execute mentally retarded defendants, Georgia should place the burden of disproving mental retardation on the prosecution when the defense presents a substantial showing that the defendant may have mental retardation. If Georgia continues to place the burden of proof on the defense, however, its burden should be limited to proof by a preponderance of the evidence.**

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**PROBLEM: Inadequate Pattern Jury Instructions on Mitigation** – Jurors in capital cases have the awesome responsibility of deciding whether another person will live or die. Unfortunately, Georgia capital jurors are confused not only about the scope of mitigation evidence that they may consider, but also about the applicable burden of proof. Approximately 41% of interviewed Georgia capital jurors did not understand that they could consider any evidence in mitigation and 62.2% believed that the defense had to prove mitigating factors beyond a reasonable doubt.

**REFORM: Georgia should revise the instructions to ensure that jurors understand applicable law and monitor the extent to which jurors understand the revised instructions to permit further revision as necessary.**

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**PROBLEM: Inadequate Proportionality Review** – Meaningful proportionality review is the best method of protecting against arbitrariness in capital sentencing. In conducting its proportionality review, however, the Georgia Supreme Court limits its review only to cases where the death penalty was imposed under similar circumstances.

**REFORM: To help ensure fairness in capital sentencing, Georgia should engage in meaningful proportionality review by reviewing cases in which a death sentence was imposed, cases in which the death penalty was sought but not imposed, and cases in which the death penalty could have been sought but was not.**