

## **PENNSYLVANIA'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 Pennsylvania Death Penalty Assessment Team, working with the American Bar Association, has found that Pennsylvania'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 Pennsylvania's system.**

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

Since 1973, the State of Pennsylvania has exonerated at least five death row inmates after they collectively spent over fifty years on death row. Despite these exonerations, the Commonwealth of Pennsylvania 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.

### **2. PENNSYLVANIA 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 Pennsylvania 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) Pennsylvania fails to guarantee the appointment of two attorneys at all stages of a capital case; (2) Pennsylvania lacks a statewide independent appointing authority responsible for training, selecting, and monitoring capital defense attorneys; and (3) attorneys often are provided insufficient access to experts and investigators or to information in discovery.

### **3. PENNSYLVANIA SHOULD PROVIDE STATE FUNDING FOR CAPITAL INDIGENT DEFENSE SERVICES.**

Pennsylvania provides no funding for indigent defense services, opting instead to rely on county-funded indigent defense systems. As a result, the quality of Pennsylvania's capital indigent defense system varies widely among counties and fails to afford uniform, quality representation to many capital defendants.

### **4. PENNSYLVANIA SHOULD ELIMINATE RACIAL AND GEOGRAPHIC BIAS FROM ITS DEATH PENALTY SYSTEM.**

While there has been recognition that racial disparities may be present in Pennsylvania's capital system, including by The Pennsylvania Supreme Court's Committee on Racial and Gender Bias in the Justice System, Pennsylvania has not conducted a comprehensive statistical study to determine the existence or non-existence of unacceptable disparities. Specifically, the Committee

found that Pennsylvania was “second only to Louisiana in the percentage of African Americans on death row” and that African American defendants in Philadelphia County were sentenced at a “significantly higher rate” than similarly situated non-African American defendants. Furthermore, the Committee found that one third of the African American death-row inmates in Philadelphia County would have received sentences of life imprisonment if they had not been African American.

**5. PENNSYLVANIA SHOULD COLLECT AND MAKE AVAILABLE DATA ON DEATH-ELIGIBLE CASES.**

Much of the data central to understanding how Pennsylvania’s capital system works is not collected or made available. Without a statewide entity that collects data on all death-eligible cases in the Commonwealth, Pennsylvania cannot ensure that its system ensures proportionality in charging or sentencing, or determine the extent of racial or geographic bias in its capital system. The Commonwealth should establish a statewide clearinghouse to collect data on all death-eligible cases, which, in turn, should be made available to the Pennsylvania Supreme Court for use in conducting meaningful proportionality review and to prosecutors for use in making charging decisions and setting charging guidelines.

**6. PENNSYLVANIA SHOULD ENSURE THAT ALL DEATH-ROW INMATES RECEIVE MEANINGFUL REVIEW IN STATE POST-CONVICTION PROCEEDINGS.**

Pennsylvania law imposes numerous restrictions on state post-conviction proceedings that seriously impede the adequate development and judicial consideration of a death-row inmate’s claims. For instance, on a successive post-conviction petition, the petitioner is afforded only sixty days to file the petition. Given that the court will not appoint counsel unless the judge determines that an evidentiary hearing is warranted, the harm of this short time period is exacerbated.

**7. PENNSYLVANIA SHOULD ENSURE THAT CAPITAL JURORS UNDERSTAND THEIR ROLES AND RESPONSIBILITIES.**

Death sentences resulting from juror confusion or mistake are intolerable, yet research establishes that the overwhelming majority of Pennsylvania capital jurors fail to understand their roles and responsibilities when deciding whether to impose a death sentence. Specifically, studies reveal that an astonishing 98.6 percent of Pennsylvania capital jurors failed to understand “at least some” portion of the jury instructions. Of those questioned, 82.8 percent of Pennsylvania capital jurors did not believe “that a life sentence really meant life in prison.” The Commonwealth of Pennsylvania should redraft its capital jury instructions with the objective of preventing common juror misconceptions that have been identified in the research literature. In addition, the Commonwealth should mandate that all capital juries be instructed on the definition of life imprisonment.

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