

TENNESSEE'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 Tennessee Death Penalty Assessment Team, working with the American Bar Association, has found that Tennessee's death penalty is plagued with serious problems. The Team recommends a number of reforms to improve the fairness and accuracy of Tennessee's system. Until these reforms are implemented, Tennessee should temporarily suspend executions.

1. TENNESSEE SHOULD ENSURE THAT IT PROVIDES DEATH-ROW INMATES WITH ADEQUATE OPPORTUNITIES TO PROVE THEIR INNOCENCE.

Tennessee does several things that increase the possibility that it might execute an innocent person. Most notably, Tennessee does not provide death-row inmates who are innocent, or who may be innocent, adequate opportunity to prove their innocence. For example, Tennessee courts failed to provide relief to Paul House, despite the fact that in June 2006, the United States Supreme Court concluded that "it is more likely than not" that Paul House is innocent. Today, House continues to await execution on Tennessee's Death Row.

In addition, the State also does not require that DNA evidence be preserved for as long as a death-row inmate is incarcerated, thereby raising the specter of evidence being destroyed before tests proving innocence have been conducted.

To address these issues, the State should create an independent commission to review claims of factual innocence in capital cases that has the power to conduct investigations, hold hearings, and test evidence. Additionally, the State should require that all biological evidence is preserved and properly stored for as long as the defendant remains incarcerated.

2. ALL POOR CAPITAL DEFENDANTS AND DEATH-ROW INMATES SHOULD RECEIVE QUALIFIED LAWYERS.

In the United States, poor criminal defendants are entitled competent attorneys. Although Tennessee courts generally appoint attorneys to represent capital defendants at trial, during appeal, and in state post-conviction proceedings, these attorneys may be overworked and underqualified. For example, Tennessee district public defender offices are burdened by some of the highest caseloads in the country and are presently short 123 attorneys. The Office of the Post-Conviction Defender also is said to be burdened by excessive caseloads, with five assistant post-conviction defenders who each carry a caseload of, on average, twelve to fourteen capital post-conviction cases.

To address these problems, Tennessee should create and vest in one statewide independent appointing authority the responsibility for appointing, training, and monitoring attorneys who represent poor individuals charged with a capital felony or sentenced to death. This independent appointing authority also should be responsible for monitoring attorney caseloads and creating and overseeing a statewide capital case trial unit and a statewide capital case appellate unit, which would consist of attorneys and staff with specialized knowledge and experience in handling death penalty cases. In addition, the State should adopt increased qualification and monitoring procedures for capital attorneys that are consistent with the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*.

3. TENNESSEE SHOULD ELIMINATE BIAS IN ITS DEATH PENALTY SYSTEM.

The Tennessee Supreme Court's Commission on Racial and Ethnic Fairness noted that when race or ethnicity is given preference in criminal proceedings, favor is given to the "majority" race or ethnicity. A recent study conducted as a part of this Assessment Report reviewed capital sentencing in Tennessee from 1981 to 2000 and concluded that individuals who killed whites were more likely to receive the death penalty than those who killed blacks. Additionally, the Tennessee Comptroller has reported that 44.7 percent of all Tennessee capital cases from 1993 to 2003 originated in Shelby County.

The State of Tennessee should sponsor a study to determine the existence or non-existence of unacceptable disparities, whether they be racial, socio-economic, geographic, or otherwise in its death penalty system, and should develop and implement proposals to eliminate any such disparities.

4. TENNESSEE SHOULD EXEMPT PEOPLE WITH SEVERE MENTAL DISABILITIES FROM THE DEATH PENALTY.

Tennessee does not have adequate protections for people with severe mental disabilities on death row, including those who were mentally disabled at the time of the offense and others who became seriously mentally ill after their conviction and sentencing. Although Tennessee excludes individuals with mental retardation from the death penalty, it does not exclude individuals with other types of serious mental disorders from being sentenced to death and/or executed.

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