

## Reforms to Consider During a Temporary Delay of Executions

*North Carolinians want a fair and reliable criminal justice system, especially when the accused faces the ultimate punishment of death. A temporary delay of executions will allow our General Assembly to consider and enact reforms to ensure fairness and accuracy in capital cases. Absent reform, North Carolinians cannot be confident that our system can prevent the wrongful conviction or execution of the innocent. Areas for reform include the following:*

**Hidden Evidence.** Recent capital cases, including Alan Gell's, have shown that faulty convictions result when prosecutors do not reveal favorable information as required by the Constitution. While law enforcement officials do not set out to convict innocent people, some may focus all of their attention too soon on a particular suspect. Many prosecutors now permit defense counsel to review the entire prosecution file. Should we require open-file discovery in all capital trials? Are additional sanctions necessary to deter misconduct by the few prosecutors who disregard the law? Can we ensure that prosecutors receive complete investigative files, in order to fulfill their constitutional duties to reveal exculpatory evidence?

**Mistaken Eyewitness Identifications.** Chief Justice I. Beverly Lake's Innocence Commission has recognized that faulty eyewitness identifications have led to convictions of innocent persons in North Carolina. Darryl Hunt, Ronald Cotton, Leslie Jean and Terrance Garner were wrongly convicted on the basis of mistaken identifications. What steps can be taken in criminal investigations and trials to prevent such mistakes?

**Inadequate Funding.** Prosecutors, law enforcement officials, and defense attorneys agree that insufficient resources cause inadequate investigations, delayed trials, and faulty convictions. Each year, less than five percent of the approximately 500 potentially capital cases result in a death penalty trial. Would additional resources or more efficient charging procedures speed the process, minimize the detention and conviction of innocent persons, and ensure conviction of the guilty? Is insufficient funding causing our forensic labs to delay findings or to render unreliable results?

**Unreliable Confessions.** In 25 percent of cases where DNA has exonerated a death row inmate, that inmate had made a false confession. A number of these cases involve defendants with mental retardation or other mental disabilities. What safeguards might minimize the risk of a false confession?

**Arbitrary Sentencing.** The current definitions of first-degree murder and aggravating circumstances are complex and arguably do little to distinguish between those persons who should be eligible for the death penalty and those who should not. Should the criteria for eligibility for the death penalty be narrowed as recommended by the N.C. Bar Association? Should we provide for pretrial review of decisions to proceed capitally in order to ensure uniform standards for the death penalty across the state?

**Weak and Unreliable Evidence.** Faulty convictions have been based solely upon the testimony from a single eyewitness, or in-custody informant, or uncorroborated

accomplice. Should we risk executions in those circumstances? Charles Munsey, Jerry Hamilton and Jonathan Hoffman were unfairly convicted and sentenced to die where deals with in-custody informants went undisclosed. How do we guarantee that any deals made with witnesses will be revealed? Should we be executing defendants based largely on purchased testimony?

**Incompetent Counsel.** More than one in six death row inmates in North Carolina had trial attorneys who have been disbarred or disciplined, while less than one percent of all lawyers in North Carolina are ever disciplined. How can we enhance the quality and training of trial lawyers and judges in capital cases?

**Discrimination.** Most death row inmates were sentenced to death for killing a white person, even though whites are a minority of homicide victims. Almost all death row prisoners are poor. How can we prevent the influence of race and financial status in the capital decision-making process?

**Just and Severe Punishment.** Ensuring that murderers are justly and severely punished serves the interests of society and especially family members of homicide victims. The public is skeptical about the reliability of the State's sole alternative to the death penalty, life imprisonment without parole. What safeguards are necessary to assure the public that life in prison without possibility of parole means that murderers will never be released?

**Judicial Review.** Every individual wrongfully convicted and sentenced to death had a trial overseen by a judge and reviewed by appellate courts. Their innocence was proved only after further procedures cost them years of liberty and drained already-scarce judicial resources, while the real perpetrators went undetected and unpunished. How can we make our system of judicial review more effective? Should our capital sentencing juries be instructed to consider residual doubt about guilt, as some experts have recommended? Should the trial judge have to approve the jury's recommendation of death, or else impose a sentence of life without parole? Should our appellate courts have earlier and broader opportunities to consider evidence of actual innocence? Do we need a separate post-trial process to handle claims of actual innocence?

**High Cost of Capital Punishment.** A Duke University School of Public Policy Study commissioned by the Administrative Office of the Courts shows that it costs an extra two million dollars per execution. North Carolina has one of the highest per capita death rows in the country and a reversal rate in capital cases of over 70%. What can be done to fix these problems?

*These are just a few of the problem areas that the General Assembly should study during a temporary delay of executions. A delay of executions will not stop death penalty trials or appeals, but will convey the message that the State has set a course to protect innocent people from execution and that North Carolina is committed to fair trials and equal justice for all.*