

MEMO



DEC 08 2010

Senate of Pennsylvania

December 6, 2010

TO: ALL SENATORS
FROM: Stewart J. Greenleaf *Stewart*
SUBJECT: Cosponsorship -- Death penalty study

I am reintroducing **Senate Resolution 342**, directing the Joint State Government Commission to establish a bipartisan task force and an advisory committee to conduct a study of capital punishment in the Commonwealth of Pennsylvania and to report their findings and recommendations to the General Assembly.

In 1972, the Pennsylvania Supreme Court declared Pennsylvania's capital sentencing procedure unconstitutional, based on the United States Supreme Court's *Furman v. Georgia* decision. In 1978, the Pennsylvania General Assembly responded by reinstating capital punishment in compliance with Pennsylvania and United States Supreme Court rulings. Since 1978, over 350 people have been sentenced to death in Pennsylvania but only three people have been executed and each of the three people executed waived the right to appeal. There are more than 200 existing capital sentences.

Questions are frequently raised regarding the costs, deterrent effect and appropriateness of capital punishment. I believe that we need to answer these questions. The American Bar Association identified several areas in which Pennsylvania's death penalty system falters in guaranteeing each capital defendant fairness and accuracy in all proceedings. The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System determined that racial, ethnic and gender biases exist, and that those biases significantly affect the way parties, witnesses, litigants, lawyers, court employees, and potential jurors are treated. Post-conviction DNA testing has shown that there are wrongful convictions, even in capital cases.

This resolution directs the Joint State Government Commission to establish a bipartisan task force of four members of the Senate to conduct a study of capital punishment. The President pro tempore shall appoint two members of the task force and the minority leader shall appoint two members of the task force.

Furthermore, the resolution directs the Joint State Government Commission to oversee the creation of an advisory committee to assist the task force in conducting the study. The advisory committee shall have approximately 30 members and shall be comprised of representatives from those groups most likely to make useful and insightful contributions, such as representatives of the judiciary, prosecution, defense, law enforcement, corrections, victim assistance organizations, and also representatives of academia, the faith community, private and public organizations involved in criminal justice issues, and other criminal justice experts.

The task force, with the assistance of the advisory committee, shall conduct a study of the following subjects, including:

- (1) Cost: Whether there is a significant difference between the cost of the death penalty from indictment to execution and the cost of life in prison without parole; in considering the overall cost of the death penalty in Pennsylvania, the cost of all the capital trials that result in life sentences as well as death sentences that are reversed on appeal must be factored into the equation;
- (2) Bias and unfairness: Whether the selection of defendants for capital trials in Pennsylvania is arbitrary, unfair or discriminatory in any way, and whether there is unfair, arbitrary or discriminatory variability at any stage in the process including in the sentencing phase;

- (3) Proportionality: Whether there is a significant difference in the crimes of those selected for the punishment of death as opposed to those who receive life in prison; and whether there is an adequate process for determining whether death sentences are excessive or out of line with sentences imposed in other cases where a sentence other than death was imposed;
- (4) Impact on and services for family members: The impact of the death penalty on family members and loved ones of murder victims; and the availability and cost of services currently being provided in Pennsylvania for family members and loved ones of murder victims and whether these services are sufficient to meet the needs of surviving families;
- (5) Mental retardation: Whether, in light of the Supreme Court ruling in *Atkins v. Virginia*, there are adequate procedural protections in place to assure that people with mental retardation are not in fact being sentenced to death and executed;
- (6) Mental illness: Whether persons suffering from mental illness constitute a disproportionate number of those on death row, what criteria should be used in judging the level of mental illness involved, and whether people with mental illness who are convicted of murder should be executed;
- (7) Juries: The impact on the reliability and fairness of capital trials of death qualifying jurors and the impact of this practice on the ability of women, people of color and people of faith to serve on capital juries; whether there are adequate procedural protections and remedies in place to make sure that women and African Americans are not excluded from serving as jurors in capital cases; and whether there are adequate procedural protections in place to assure that jurors are able to understand and apply instructions in determining guilt or innocence and the appropriate punishment in a capital case;
- (8) State appeals and post conviction: Whether there are adequate procedures in place to assure that serious error in capital cases is identified and corrected; and to what extent procedural doctrines such as waiver or forfeiture operate to prevent judicial review of serious constitutional claims on the merits;
- (9) Clemency: Whether the current clemency process has procedures in place to assure that it functions as a safety net to assure that factual and procedural errors that directly undermine the reliability and fairness of a capital sentence are remedied;
- (10) Penological intent: Whether the death penalty rationally serves a legitimate penological intent such as public safety or deterrence;
- (11) Innocence: Whether there is a risk of execution of an innocent person; and whether there are adequate procedural protections in place to prevent an innocent person from being sentenced to death and executed;
- (12) Alternatives: Whether alternatives to the death penalty exist that would sufficiently ensure public safety and address other legitimate social and penological interests;
- (13) Counsel: The quality of counsel provided to indigent capital defendants; and whether such counsel and the process for providing counsel assures the reliability and fairness of capital trials;
- (14) Secondary trauma: The impact of the death penalty process on law enforcement, prosecutors, defense counsel, judges, jurors, correctional officers, family members and loved ones of victims, and family members of the accused;
- (15) Length and conditions of confinement on death row: Whether the conditions comply with the requirements of the United States Constitution, the Constitution of the Commonwealth of Pennsylvania, and standards of international law, and the impact of those conditions on correctional officers;
- (16) Lethal injection: Whether there are adequate procedures and protocols in place to assure that the death sentence is administered in accordance with requirements of the United States Constitution and the Constitution of the Commonwealth of Pennsylvania; and
- (17) Public opinion: Ascertain the opinions of Pennsylvania residents regarding capital punishment, including whether it is a just and appropriate punishment and, if so, under what circumstances should it be imposed.

The task force and advisory committee may hold public hearings as necessary to receive testimony about any of the subjects of study enumerated. The task force and advisory committee shall report their findings and recommendations to the Senate no later than two years after the date this resolution is adopted.

As introduced last session, this resolution was concurrent meaning that it needed approval by the Senate and the House of Representatives. As reintroduced, the resolution is a simple Senate resolution with the expectation that a similar resolution will be introduced in the House of Representatives.

If you would like to cosponsor this legislation, please contact Pat Snively of my office by e-mailing her at psnively@pasen.gov.