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Cantero and Schlakman: State must act to fix flaws in the death penalty

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My View

Four years ago, the American Bar Association released a comprehensive Florida Death Penalty Assessment Team report that raised serious concerns about the state's death penalty process. Since then, with few exceptions, state government has done little to remedy problems identified in the report.

To conduct the assessment, the ABA assembled a diverse and highly qualified eight-member team to work in collaboration with its Washington, D.C.-based staff. The objective was to ensure that prosecutorial, defense, judicial, academic and other relevant perspectives were adequately represented when assessing Florida's death penalty process.

The team resolved at the outset that its findings and recommendations had to be unanimous to be included in the report. Put simply, the report's findings and recommendations were intended to improve the administration of justice in Florida and promote fairness and accuracy in our criminal-justice system without regard to ones views on capital punishment.

Among the key findings was that death penalty defendants often receive abysmal legal representation.

The report makes several related recommendations, including reinstating the Capital Collateral Regional Counsel office in the northern region of Florida (it was disbanded within the context of a still ongoing pilot project that relies on private registry counsel). These private lawyers generally don't specialize in capital defense work nor do they benefit from the supervision and support available to CCRC lawyers in central and south Florida, and they typically receive only nominal compensation for their efforts.

Gov. Charlie Crist expressed support for reinstating CCRC North. So did Sen. Victor Crist, R-Tampa, chairman of both the Florida Senate Committee on Criminal and Civil Justice Appropriations and the state's Commission on Capital Cases, but the measure failed to gain traction in the Florida House.

Another major recommendation embraced a Florida Supreme Court opinion that called upon the Legislature to revisit the state's death penalty statute. The report, like the opinion, observed that Florida is the only one of 35 death penalty states to allow a jury to decide whether aggravating factors exist and to recommend a death sentence by a simple majority vote during the penalty phase of the proceedings.

The Legislature has been unresponsive to the court's strongly worded call for action. It was reported at the time that Gov. Jeb Bush believed the issue was "definitely worth consideration" and cautioned legislators not to ignore the court; however, Gov. Crist has voiced opposition to this recommendation.

Yet another cause for alarm noted in the report pertains to the number of defendants on Florida's Death Row who have been exonerated. The Death Penalty Information Center, a Washington, D.C.-based nonprofit organization, reports that Florida has exonerated more death-sentenced inmates than any other state since 1973. One individual was exonerated after he died of cancer on Death Row.

The report also documents evidence of socioeconomic, racial and geographic bias.

As candidates for governor, attorney general the Legislature enter the final days of their respective campaigns, conventional wisdom seems to be holding in that Republicans and Democrats alike generally avoid taking positions that could be perceived as anything but strong on the death penalty.

The tragic irony is that standing up for a more fair and accurate criminal justice system is often misconstrued as being soft on crime and indifferent to victims' interests, or is cast in terms of liberal vs. conservative ideology.

Circuit judges, who preside over capital cases at trial, while nonpartisan and subject to the judicial canons, are not completely insulated from such dynamics, which further complicates the process.

While it is completely understandable and appropriate that the economy and jobs have been the top concerns during the 2010 election cycle, and recognizing that public discourse involving the death penalty almost inevitably creates space for demagoguery, it nevertheless is regrettable that Florida's death penalty process hasn't received more attention.

These issues require open and honest dialog about potential solutions and the implications of simply maintaining the status quo, including the related fiscal implications for Florida taxpayers.

Florida's next governor and attorney general, and Florida's next slate of state legislators, must ensure that their personal perspectives and public outrage do not overshadow the fact that Florida's death penalty process is fraught with problems. The people of Florida should demand no less.

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LEARN MORE: To read the report, go to www.abavideonews.org/ABA340. To view an ABA forum convened in Tallahassee last fall in cooperation with the Florida State University Center for the Advancement of Human Rights, go to <http://campus.fsu.edu/ABA>.