

A CONCURRENT RESOLUTION establishing the Task Force on the Costs of the Death Penalty in Kentucky.

WHEREAS, the experience of this Commonwealth with the death penalty since 1976 has been characterized by significant expenditures of money, resources, and time; and

WHEREAS, the financial cost of administering the death penalty in Kentucky depletes valuable resources making them unavailable for many other significant unmet needs of the state, including the needs of the courts, state police, corrections, prosecutors, public defense, and other critical elements of the criminal justice system; and

WHEREAS, the American Bar Association Kentucky Assessment Team on the Death Penalty, consisting of two retired Kentucky Supreme Court Justices, a former chair of the House Judiciary Committee, and distinguished law professors and bar leaders from Kentucky, conducted the most extensive analysis of the manner in which the death penalty is administered in Kentucky and issued findings and recommendations in December 2011; however, the assessment team did not study the costs of administering the death penalty in Kentucky; and

WHEREAS, the American Bar Association Kentucky Assessment Team stated that it had "examined all death sentences imposed in the Commonwealth since 1976. As of November 2011, 78 people have been sentenced to death. Fifty-two of these individuals have had a death sentence overturned on appeal by Kentucky or federal courts, or been granted clemency. This is an error rate of approximately 60 percent. Furthermore, capital prosecutions occur in far more cases than result in death sentences. This places a significant judicial and financial burden on Commonwealth courts, prosecutors, defenders, and the criminal justice system at large, to treat many cases as death penalty cases, despite the fact that cases often result in acquittal, conviction on a lesser charge, or a last minute agreement to a sentence less than death"; and

WHEREAS, the American Bar Association Kentucky Assessment Team concluded,

"This calls into serious question whether the Commonwealth's resources are well-spent on the current error-prone nature of the death penalty in Kentucky. Budget shortfalls have undoubtedly compounded the problem, resulting in furloughs and budget cuts to the courts, prosecutors' offices, and defenders' offices across the Commonwealth in the last few years. This will inevitably lead to greater risk of error. Finally, actors in the criminal justice system must expend an extraordinary amount of time prosecuting, defending, and adjudicating capital cases as compared to other criminal and civil cases. This contributes to burdensome caseloads and clogged dockets, affecting the quality of justice administered to all Kentuckians"; and

WHEREAS, the death penalty was reinstated in Kentucky in 1976, and at no time since its reinstatement has the Commonwealth examined the costs of its implementation to the taxpayers of the Commonwealth. Without data to determine the real costs of its implementation, Kentucky cannot ensure that this government program is effective or that it is administered in a rational, efficient manner;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

➔Section 1. There is hereby created the Task Force on the Costs of the Death Penalty in Kentucky. The task force shall investigate, determine, and report all of the costs associated with administering the death penalty in the Commonwealth of Kentucky and compare those costs to the costs of a system that does not have death as a possible punishment.

➔Section 2. The task force shall comprehensively identify all costs of administering the death penalty borne by the Commonwealth of Kentucky and by the local governments in this state, including but not limited to the costs relating to the death penalty at each stage of the proceedings in capital murder cases, such as pretrial costs, the costs of prosecuting and defending capital cases, the costs incurred at all stages of

adjudication, trial, appellate, and postconviction, and the costs of incarceration for capital murder cases as compared to noncapital murder cases. The task force shall consider all relevant cost factors including but not limited to the costs of:

- (1) Legal counsel prosecuting and defending a capital murder case for all pretrial, trial, and postconviction proceedings;
- (2) Investigation by police, prosecutors, and defense;
- (3) Pretrial litigation;
- (4) Mental health, medical, forensic testing, evaluations, expert witness fees, and testimony;
- (5) Jury selection;
- (6) Sentencing proceedings;
- (7) Appellate and postconviction proceedings, including motions, writs of certiorari, and state and federal petitions for postconviction relief;
- (8) Clemency;
- (9) Incarceration of persons awaiting trial in capital murder cases and persons sentenced to death; and
- (10) Execution of a sentence of death, including costs of facilities and staff.

➔Section 3. The task force shall also review information from the last seven years, at a minimum and to the extent possible to determine:

- (1) The number of death-eligible cases in the Commonwealth versus the number of cases in which death was sought, and a comparison of the facts and the aggravating circumstances in those cases;
- (2) The number of cases in which death was sought that ended in a disposition of less than death and the nature of the disposition of each, whether a plea or a jury verdict;
- (3) Cases that resulted in a verdict of death that were later reversed and at what stage they were reversed, or which were resolved with the death of the defendant prior to final resolution of the case, or which were resolved by plea or subsequent verdict of less

than death after reversal;

➔Section 4. The study by the task force shall include additional analyses to:

(1) Identify an evidenced-based estimated average cost of a capital-eligible case in which prosecutors did not seek the death penalty;

(2) Identify an evidenced-based estimated average cost of a capital-eligible case in which prosecutors unsuccessfully sought the death penalty;

(3) Identify an evidenced-based estimated average cost of a capital-eligible case resulting in a death sentence;

(4) Identify the "opportunity costs" involved, for example, if a prosecutor, defense counsel, or judge works longer on a case because it is a death penalty case, then those hours are not available for other work. If death penalty cases take more time, then that time difference is a net cost measured in the hours of all the participants;

(5) Compare the average difference in cost of a capital-eligible case in which a death sentence was sought as compared to the cost of a capital-eligible case in which a death sentence was not sought;

(6) Compare the average difference in cost between cases in which a death sentence was returned compared to capital-eligible cases in which a death sentence was not sought;

(7) Compare a system in which the death penalty is employed to a system dealing with similar crimes in which a sentence of life without parole is the most severe punishment allowed; and

(8) Provide an evidenced-based estimate for how much money is spent per year above and beyond the cost to punish all first-degree murderers with a maximum of life in prison without parole.

➔Section 5. The task force shall also review studies by other states and the federal government on the administration of the death penalty.

➔Section 6. The Executive and Judicial branches of government shall provide

necessary data, research, drafting, and other requested information to assist the task force in the performance of its duties.

➔Section 7. The task force shall be composed of the following members, with final membership of the task force being subject to the consideration and approval of the Legislative Research Commission:

(1) Two members from the majority party of the Senate, to be appointed by the President of the Senate, one of whom is to be appointed to serve as co-chair of the task force;

(2) Two members from the majority party of the House of Representatives, to be appointed by the Speaker of the House, one of whom is to be appointed to serve as co-chair of the task force;

(3) One member from the minority party of the Senate, to be appointed by the Senate Minority Floor Leader; and

(4) One member from the minority party of the House of Representatives, to be appointed by the House Minority Floor Leader.

➔Section 8. The task force shall meet monthly during the 2015 Interim of the General Assembly and shall submit a report to the Legislative Research Commission for referral to the appropriate interim joint committee or committees by December 1, 2015. The report shall, at a minimum, include a detailed analysis of all costs associated with the administration of the death penalty in the state, the number and outcomes of death-eligible cases, and any other mandated objectives in conformity with the provisions of this Resolution. If the task force is unable to derive sufficient information to complete its objectives, the report shall include a description of the unavailable information, the agencies associated with the information, the challenges presented to the agencies in recording the information, and recommendations for policy changes within those agencies that would allow better documentation of the costs and outcomes associated with the death penalty.

➔Section 9. Provisions of this Resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.