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American Bar Association report says PA death penalty system is flawed

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HARRISBURG - Flaws in Pennsylvania's death penalty system are so pervasive that the state risks executing an innocent person, according to a study released today by the American Bar Association.

The 324-page report urged the state to preserve biological evidence for post-trial DNA tests, videotape homicide investigations and implement modern witness-lineup techniques - three procedures the ABA said would add accuracy, integrity and efficiency to a process long maligned both by proponents and opponents of the death penalty.

The ABA study, crafted by five veteran Philadelphia-area lawyers, including a judge and a prosecutor, also criticized the state's failure to provide decent lawyers and investigators for poor defendants at trial.

The study also said that the state has failed to address long-alleged racial and geographic disparities between defendants sentenced for similar crimes. In 2003, a committee appointed by the state supreme court to study racial and gender bias found "strong indications" that the Pennsylvania does not "operate in an even-handed manner."

ABA president William H. Neukom said it is "critical to correct" the problems because "it is important to have a fair and accurate process, not just for the accused but also for the victims and for the public."

The ABA report, presented at the state capitol this morning, is similar to

recent ABA assessments that found fundamental flaws in seven other states -- Alabama, Arizona, Florida, Georgia, Indiana, Ohio and Tennessee.

The ABA, the nation's largest lawyers' association, does not have an official position on capital punishment. However, since 1997 the ABA has called for a moratorium on executions "until fairness and accuracy - that is, due process - are assured in death penalty cases."

The Pennsylvania ABA report was produced by Villanova law professor Anne Bowen Poulin; Delaware County Common Pleas Judge Frank T. Hazel, a former district attorney; Montgomery County Deputy District Attorney Mary MacNeil Killinger; Penn Law professor David Rudovsky, a noted local civil rights lawyer; and former federal prosecutor Gregory P. Miller, now a lawyer in private practice in Philadelphia.

"It is important to understand that the shortcomings we identified operate with a cumulative effect," Poulin said. "Fixing one or some of the problems will not make the system right, and it is absolutely vital to do the additional study of the system that our report calls for, so that reforms can be implemented that will provide us with real justice."

In addition to calling for DNA, interrogation and witness-identification reforms, the ABA study also proposed:

- The establishment of a statewide database of all death-eligible

cases - including cases in which a person was sentenced to life - as a method of comparing sentences received for similar crimes. A so-called proportionality database is utilized by some state supreme courts as a safety valve to prevent aberrant sentences.

- The adoption of uniform, state-wide standards for lawyers who represent the poor, including the appointment of two attorneys at every stage of the process and salaries that match those paid to prosecutors.
- The creation of a statewide agency to train, appoint and monitor defense lawyers.

There are 226 inmates on Pennsylvania's death row. But since 1978, when the death penalty was re-enacted here to comply with fairness revisions mandated by the U.S. Supreme Court, three inmates have been executed.

In that same period, twice as many inmates have been exonerated, the ABA report said.

There are approximately 3,350 people on death row in the U.S., according to the Death Penalty Information Center in Washington. Since 1977, 1,099 people have been executed, including 42 this year.

Several states with upcoming scheduled executions, including Texas and Tennessee, appear to have stayed them, pending U.S. Supreme Court consideration of a Kentucky case over the constitutionality of lethal injection procedures.