

***AS APPROVED BY THE ABA HOUSE OF DELEGATES FEBRUARY 3, 1997:***

AMERICAN BAR ASSOCIATION  
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES  
SECTION OF LITIGATION  
SECTION OF TORT AND INSURANCE PRACTICE  
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW  
MASSACHUSETTS BAR ASSOCIATION  
THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK  
NEW YORK STATE BAR ASSOCIATION

RECOMMENDATION

**RESOLVED**, That the American Bar Association calls upon each jurisdiction that imposes capital punishment not to carry out the death penalty until the jurisdiction implements policies and procedures that are consistent with the following longstanding American Bar Association policies intended to (1) ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and (2) minimize the risk that innocent persons may be executed:

- (i) Implementing ABA “Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases” (adopted Feb. 1989) and Association policies intended to encourage competency of counsel in capital cases (adopted Feb. 1979, Feb. 1988, Feb. 1990, Aug. 1996);
- (ii) Preserving, enhancing, and streamlining state and federal courts’ authority and responsibility to exercise independent judgment on the merits of constitutional claims in state post-conviction and federal *habeas corpus* proceedings (adopted Aug. 1982, Feb. 1990);
- (iii) Striving to eliminate discrimination in capital sentencing on the basis of the race of either the victim or the defendant (adopted Aug. 1988, Aug. 1991); and
- (iv) Preventing execution of mentally retarded persons (adopted Feb. 1989) and persons who were under the age of 18 at the time of their offenses (adopted Aug. 1983).

**FURTHER RESOLVED**, That in adopting this recommendation, apart from existing Association policies relating to offenders who are mentally retarded or under the age of 18 at the time of the commission of the offenses, the Association takes no position on the death penalty.