

## Senate Resolution 1030

By: Senators Fort of the 39th, Tate of the 38th, Thomas of the 2nd, Seay of the 34th and Zamarripa of the 36th

## A RESOLUTION

1 Creating the Georgia Capital Punishment Study Commission to study the death penalty; to  
2 provide for the powers, duties, and compensation of its members; to urge the suspension of  
3 executions until such time as a report from such study commission is submitted to the  
4 General Assembly; and to urge the General Assembly to act in response to recommendations  
5 from the study commission; and for other purposes.

6 WHEREAS, life is the most valuable possession of a human being; and

7 WHEREAS, the state should exercise utmost care to protect its residents' lives from  
8 homicide, accident, or arbitrary or wrongful taking of life by the state; and

9 WHEREAS, there has been increasing public awareness of cases of individuals wrongfully  
10 convicted of murder, in Georgia and elsewhere in the nation; and

11 WHEREAS, the General Assembly is troubled that the possibility of mistake in the death  
12 penalty process may undermine public confidence in our criminal justice system; and

13 WHEREAS, the execution of an innocent person by the State of Georgia would be a grave  
14 and irreversible injustice; and

15 WHEREAS, in January, 2006, the American Bar Association published "*Ensuring Fairness*  
16 *and Accuracy in State Death Penalty Systems: The Georgia Death Penalty Assessment*  
17 *Report*," which analyzed 12 issues related to Georgia's laws, procedures, and practices  
18 related to the death penalty in Georgia; and

19 WHEREAS, the American Bar Association and a majority of the members of the Georgia  
20 Death Penalty Assessment Team have called for a moratorium on executions, and a majority

1 of the members of the Georgia Death Penalty Assessment Team have also called for a  
2 moratorium on capital prosecutions; and

3 WHEREAS, there is public concern that racial and socioeconomic factors influence decisions  
4 to seek or impose the death penalty; and

5 WHEREAS, there is a lack of any meaningful procedure to ensure uniform application of the  
6 death penalty in each county throughout the state; and

7 WHEREAS, the experience of this state with the death penalty has been characterized by  
8 significant expenditures of money and time; and

9 WHEREAS, in order for the state to protect its moral and ethical integrity, the state must  
10 ensure a justice system which is impartial, uncorrupted, equitable, competent, and in line  
11 with evolving standards of decency.

12 NOW, THEREFORE, BE IT RESOLVED BY THE GENERAL ASSEMBLY OF  
13 GEORGIA:

14 **SECTION 1.**

15 There is created the Georgia Capital Punishment Study Commission. The commission shall  
16 be composed of 18 members as follows:

- 17 (1) The majority leader of the Senate or his or her designee;
- 18 (2) The minority leader of the Senate or his or her designee;
- 19 (3) The majority leader of the House of Representatives or his or her designee;
- 20 (4) The minority leader of the House of Representatives or his or her designee;
- 21 (5) Three members appointed by the Governor, one of whom is a member of the  
22 Association County Commissioners of Georgia, one of whom is employed by the State  
23 Board of Pardons and Paroles, and one of whom is employed by the Department of  
24 Corrections;
- 25 (6) The Chief Justice of the Georgia Supreme Court or his or her designee;
- 26 (7) The director of the Office of the Georgia Capital Defender or his or her designee;
- 27 (8) The director of the Georgia Public Defender Standards Council or his or her  
28 designee;
- 29 (9) The chairperson of the Prosecuting Attorneys' Council of Georgia or his or her  
30 designee;
- 31 (10) The Attorney General or his or her designee;

(11) The president of the State Bar of Georgia or his or her designee;

(12) The director of the Georgia Bureau of Investigation or his or her designee;

(13) The chairperson of the Georgia Death Penalty Assessment Team or his or her designee;

(14) A member of the Georgia Association of Criminal Defense Lawyers who is death penalty qualified, appointed by the president of the Georgia Association of Criminal Defense Lawyers;

(15) The president of the Georgia chapter of the National Alliance on Mental Illness or his or her designee; and

(16) The president of the Georgia chapter of the American Association on Mental Retardation or his or her designee.

Members shall be appointed within 60 days of enactment of this resolution. Appointments should reflect the diversity of the population of Georgia. The commission shall choose a chairperson from among its members. Any vacancy in the membership shall be filled in the same manner as the original appointment.

## **SECTION 2.**

(a) The commission shall study all aspects of the death penalty as currently administered in the State of Georgia, including, but not limited to, the following issues:

(1) The recommendations made by the American Bar Association;

(2) The recommendations of the Georgia Death Penalty Assessment Report;

(3) Whether the selection of defendants in Georgia for capital trials is arbitrary, unfair, or discriminatory in any way and whether there is unfair, arbitrary, or discriminatory variability in the sentencing phase or at any stage of the process including, but not limited to, the issue of race, socioeconomic status, or geography;

(4) 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;

(5) Whether the death penalty is serving the needs of families of victims and the general safety needs of the public, taking into account any other services that might better serve their needs and whether those services are being provided;

(6) Whether the death penalty rationally serves a legitimate penological interest such as deterrence;

(7) Whether the death penalty as it is currently applied is consistent with evolving standards of decency;

(8) 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 Georgia, the cost of all the capital trials that result in

1 life sentences as well as the death sentences that are reversed on appeal shall be factored  
2 into the equation;

3 (9) Whether the state should establish a state-wide clearinghouse to review decisions to  
4 seek the death penalty and any other issues for which a state-wide clearinghouse would  
5 be useful in the context of death penalty cases;

6 (10) Whether the ability to seek the death penalty for felony murder and malice murder  
7 cases should be changed; and

8 (11) The standard of proof for proving mental illness or mental retardation in the context  
9 of death penalty cases.

10 (b) The commission shall review:

11 (1) *Ensuring Fairness and Accuracy in State Death Penalty Systems: The Georgia*  
12 *Death Penalty Assessment Report*, dated January, 2006, and the recommendations of such  
13 report;

14 (2) *Mandatory Justice: Eighteen Reforms to the Death Penalty*, a report of The  
15 Constitution Project's bipartisan, blue ribbon commission of capital punishment  
16 supporters and opponents;

17 (3) Other nonpartisan, academic, or government inquiries into the administration of  
18 capital punishment at state and national levels; and

19 (4) All data on homicides in Georgia for the past ten years and the nature of the  
20 disposition of each case including cases in which the death penalty was sought but not  
21 imposed and cases in which the death penalty could have been sought but was not sought.

22 (c) The commission shall make recommendations to guarantee that the application and  
23 administration of capital punishment in this state and the public policy of this state regarding  
24 capital punishment is free from bias and error and designed to guarantee fairness and  
25 accuracy and propose new legislation, if appropriate.

### 26 SECTION 3.

27 The commission is entitled to the assistance and service of the employees of any state,  
28 county, or municipal department, board, bureau, commission, or agency as it may require and  
29 as may be available to it for its purposes and to employ stenographic and clerical assistance.

### 30 SECTION 4.

31 The commission shall undertake a study of the conditions, needs, issues, and problems  
32 mentioned above or related thereto and recommend to the General Assembly any action or  
33 legislation which the commission deems necessary or appropriate. The commission may  
34 conduct such meetings at such places and at such times as it deems necessary or convenient  
35 to enable it to exercise fully and effectively its powers, perform its duties, and accomplish

1 the objectives and purposes of this resolution. The legislative members of the commission  
2 shall receive the allowances provided for in Code Section 28-1-8 of the Official Code of  
3 Georgia Annotated. Citizen members shall receive a daily expense allowance in the amount  
4 specified in subsection (b) of Code Section 45-7-21 of the Official Code of Georgia  
5 Annotated as well as the mileage or transportation allowance authorized for state employees.  
6 Members of the commission who are state officials, other than legislative members, and state  
7 employees shall receive no compensation for their services on the commission, but they shall  
8 be reimbursed for expenses incurred by them in the performance of their duties as members  
9 of the commission in the same manner as they are reimbursed for expenses in their capacities  
10 as state officials or employees. The funds necessary for the reimbursement of the expenses  
11 of state officials, other than legislative members, and state employees shall come from funds  
12 appropriated to or otherwise available to their respective departments. All other funds  
13 necessary to carry out the provisions of this resolution shall come from funds appropriated  
14 to the House of Representatives and the Senate. The expenses and allowances authorized by  
15 this resolution shall not be received by any member of the commission for more than ten  
16 days unless additional days are authorized. The commission shall make a report of its  
17 findings and recommendations, with suggestions for proposed legislation, if any; such report  
18 shall be made on or before December 31, 2008. The commission shall stand abolished on  
19 December 31, 2008.

## 20 **SECTION 5.**

21 The General Assembly acknowledges the seriousness of the questions raised herein. The  
22 General Assembly also acknowledges that the commission will need to dispassionately  
23 examine all questions surrounding the use of the death penalty in the State of Georgia. It is  
24 further acknowledged that the pressures of a pending execution might affect the deliberations  
25 of the commission. It is therefore recommended that prosecutions initiating a proceeding  
26 seeking the death penalty shall not be sought and that no execution shall be carried out until  
27 the commission has completed its report. The General Assembly urges the State Board of  
28 Pardons and Paroles to issue appropriate stays of execution so that no execution shall be  
29 carried out prior to the issuance of the report and final action of the General Assembly in  
30 response to the Georgia Capital Punishment Study Commission's report and  
31 recommendations.