

Author of state death penalty urges adequate defense funding

Tuesday, October 16, 2007

By Andy Sher

Nashville Bureau

NASHVILLE -- A former prosecutor who wrote Tennessee's current death penalty statute 30 years ago told a legislative panel Monday that prosecuting capital offenses is a "luxury item" that requires adequate funding for defendants.

Attorney David Raybin's comments came as the panel of lawmakers, defense attorneys and others convened for the first time to begin their study of the use of the state's death penalty.

"After 30 years I can tell you categorically that the death penalty is a luxury ... luxury item, something we want to have," Mr. Raybin said. "But we want to do it right and just and fair. ... You need to be prepared to pay for it and administer it in a uniform manner."

Mr. Raybin said polls show some 70 percent of Americans back the death penalty.

Mr. Raybin recommended the state provide set amounts of funding for services such as the hiring of private investigators by defense attorneys instead of having to run individual expenditures through the judicial system, including the state Supreme Court.

Other recommendations made by Mr. Raybin included:

* Requiring district attorneys general to share case file information with defense attorneys in death penalty cases.

* Requiring confessions be tape recorded from "start to finish."

* Studying where bottlenecks are occurring in a capital-punishment system where the average time between sentencing and execution is 22 years.

Former District Attorney General Al Schmutzer of Sevier County, Tenn., a panel member who earlier clashed with criminal defense attorneys on the panel, told Mr. Raybin that some of the issues he raised have a "lot of merit."

Mr. Schmutzer noted that judges now oversee expenditures made by defense attorney representing defendants in death penalty cases. Those discussions are held outside the presence of prosecutors, which could generate problems if other aspects of the case are discussed, Mr. Schmutzer said.

The 16-member panel was created this year by the General Assembly to make recommendations designed to make capital punishment in Tennessee "uniform in its application and administration so that the capital process is free from bias and error."