

973398661

SENATE JOINT RESOLUTION NO. 334

Offered January 20, 1997

Requesting the Department of Corrections to prepare for study a statement of policies and procedures to guarantee every offender, especially those on death row, free access to the clergy for the exercise of their fundamental religious rights; and requesting the Senate Committee on Rehabilitation and Social Services and the House Committee on Health, Welfare, and Institutions to study the statement of policies and procedures and make recommendations to the General Assembly.

Patron—Gartlan

Referred to the Committee on Rules

WHEREAS, the First Amendment of the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"; and

WHEREAS, the First Amendment applies to the states under the Fourteenth Amendment; and

WHEREAS, Justice Brennan stated in *O'Lone v. Estate of Shabazz*, 482 U.S. 355 (1987), that "[t]he Constitution was not adopted as a means of enhancing the efficiency with which government officials conduct their affairs, nor as a blueprint for ensuring sufficient reliance on administrative expertise. Rather, it was meant to provide a bulwark against the infringements that might otherwise be justified as necessary expedients of governing," 482 U.S. at 356 (J. Brennan dissenting); and

WHEREAS, the United States Supreme Court has never held that the Constitution mandates that convicted prisoners forfeit constitutionally secured protections; and

WHEREAS, Chief Justice Rehnquist stated that "[i]nmates clearly retain protections afforded by the First Amendment, including its directive that no law shall prohibit the free exercise of religion," *O'Lone* at 348; and

WHEREAS, spiritual guidance, a protected fundamental freedom, can be a crucial part of a prisoner's life; and

WHEREAS, the Department of Corrections has taken administrative actions recently which have resulted in an outright denial of clergy to prisoners faced with the state's ultimate penalty of death; and

WHEREAS, under *Woodson v. North Carolina*, 428 U.S. 297, 301 (1976), the state's power to punish those who have committed crimes must be exercised "within the limits of civilized standards" and with a "decency that mark[s] the progress of a maturing society"; and

WHEREAS, such power should be exercised without offending fundamental notions of human dignity for all; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Department of Corrections prepare a statement of policies and procedures to be used by the Department to guarantee every inmate, especially those on death row, free access to the clergy for the exercise of their fundamental religious rights; and, be it

RESOLVED FURTHER, That the Department shall present the statement to the Chairmen of the Senate Committee on Rehabilitation and Social Services and the House Committee on Health, Welfare, and Institutions prior to August 1, 1997, which shall, upon consideration of the statement, applicable law, and public policy, make recommendations to the 1998 Session of the General Assembly regarding appropriate means for securing fundamental freedoms guaranteed by the Constitution while providing for the legitimate needs of the Commonwealth to maintain security within its penal institutions. The Committees shall also study the appropriateness of the facilities being provided for religious and counseling purposes, including to what extent chapel space is being provided. Finally, the Committees shall study what procedures are necessary to guarantee access to the clergy, even during periods of administrative lock-down, and under what emergency circumstances access to the clergy might legitimately be restricted.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the Committees, upon request.

The Committees shall complete their work in time to submit their findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

INTRODUCED

SJ334