



Timothy Rankin

Bill Analysis
Legislative Service Commission

H.B. 733

123rd General Assembly
(As Introduced)

Reps. Smith, Patton, Ford, Barrett, Redfern, Pringle, Sutton, Hartley, Allen, J. Beatty, Sykes, Barnes, Britton, R. Miller, D. Miller, James

BILL SUMMARY

- Establishes a moratorium on the execution of any sentence of death until the General Assembly terminates the moratorium by act.
- Requires the leadership of the General Assembly and the Governor to jointly appoint a Capital Punishment Review Commission to review and study the imposition of capital punishment in Ohio, specifically with respect to the fairness of the mechanism used in administering and imposing capital punishment and to the possibility that a sentence of death might have been imposed under that mechanism upon one or more innocent persons, and to make recommendations regarding necessary changes in the law.

CONTENT AND OPERATION

Moratorium on the execution of death sentences

The bill establishes a moratorium on the execution of any death sentence by prohibiting the Director of Rehabilitation and Correction and any other officer, employee, or agent of the state from executing any sentence of death imposed on any convicted offender, notwithstanding the existing Revised Code sections pertaining to the execution of death sentences or any other provision of law or court order to the contrary (see **COMMENT 1**). The Department of Rehabilitation and Correction must retain custody of any convicted offender for whom the execution of a sentence of death is prohibited under the bill, in the same manner as if the date scheduled for the execution of the offender's sentence of death had not been attained. The moratorium on the execution of any death sentence begins on the effective date of the bill and ends when the General Assembly terminates the moratorium by act. (Section 1(A) and (B).)

Capital Punishment Review Commission

Commission membership

The bill requires the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Governor to jointly appoint a Capital Punishment Review Commission. Members of the Commission must include persons who have experience and training in the law, law enforcement, corrections, statistics, and sociology, with at least one member from each of those categories, persons who are crime victims or representatives of organizations representing crime victims, persons who were convicted of criminal offenses and were exonerated of the crimes of which they were convicted, and any other persons the appointing officials believe appropriate.

The duties of the Commission

The bill requires the Commission to review and study the imposition and administration of capital punishment in Ohio, specifically with respect to the fairness of the mechanism used in administering and imposing capital punishment and to the possibility that a sentence of death might have been imposed under the mechanism upon one or more innocent persons (see **COMMENT 2**). The bill requires the Commission, in its review and study, to consider all aspects of Ohio's mechanism for imposing and administering capital punishment, including, but not limited to, all of the following:

(1) The fairness of trials and sentencing procedures under the mechanism, the possibility that the mechanism might result in the exclusion of relevant physical evidence or testimony, the possibility that certain witnesses might not be available under the mechanism, and, regarding trials and sentencing procedures under the mechanism, the fairness of eyewitness testimony and evidence, the fairness of jury depositions to weigh credible evidence versus the victim's outrage, the fairness of the appeals process, the fairness of allowable time limitations to appeal after a case has been heard, the impact and treatment of racism, and the fairness of prosecutors releasing crime evidence; and

(2) A review of individual cases in which a death sentence has been imposed upon a person, including, but not limited to, the fairness of the application and use of the mechanism in each particular case, the possibility that evidence that is relevant in any of the particular cases might have been discovered subsequent to the conclusion of that case, and the possibility that scientific advancements made subsequent to the conclusion of any of the particular cases might produce evidence that is relevant to that case.

The Commission must report its findings

The bill requires the Commission, no later than one year after the bill's effective date, to prepare and submit to the General Assembly and the Governor a report that sets forth its findings regarding the imposition and administration of capital punishment in Ohio and the possibility that innocent persons might have received a sentence of death, and that makes recommendations regarding changes in the law the Commission believes are necessary to avoid the possibility of imposing a death sentence upon an innocent person.

COMMENT

1. The bill contains information regarding the General Assembly's rationale for establishing the moratorium. It states that the General Assembly recognizes, and strongly endorses, the fact that one of the main goals of the state's criminal justice system is to ensure the public safety of the residents of Ohio, but that the General Assembly also believes that in accomplishing this goal, the state must ensure that the ends of justice are served, particularly regarding the imposition of the ultimate criminal punishment, a sentence of death. Further, it states that: (a) the General Assembly expresses serious concern about the possibility that innocent people might be on death row in Ohio, after having been wrongfully convicted of a capital offense they did not commit, (b) although only one person has been executed in Ohio since the United States Supreme Court in the 1970s authorized the reinstatement of capital punishment, there are approximately 200 inmates currently on death row in Ohio, and, based on evidence that is available from the state of Illinois, there is a strong possibility that some of those death row inmates did not commit the crime for which they were sentenced to death, and (c) in Illinois, since capital punishment was reinstated in 1977, 12 death row inmates have been executed, but 13 have been exonerated, with some of the inmates who were exonerated being only days away from execution. (Section 1(A).)

2. Under existing law, the only situation in which a death sentence may be imposed on a person is if the person is convicted of or pleads guilty to the offense of "aggravated murder" (set forth in R.C. 2903.01), the person also is convicted of or pleads guilty to one or more specifications of an "aggravating circumstance" (set forth in R.C. 2929.04(A)), and the sentencing authority determines, after conducting a "balancing test" (see below) between aggravating circumstances proved and all "mitigating factors" (set forth in R.C. 2929.04(B)) present, that the aggravating circumstances outweigh the mitigating factors.

A special sentencing law, set forth in R.C. 2929.02 to 2929.06, exists for determining the sentence of a person who is convicted of or pleads guilty to aggravated murder and one or more aggravating circumstances. If the offender

was tried by a three-judge panel, the panel must weigh the aggravating circumstances proved against the mitigating factors present in the case. If the panel unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances proved outweigh the mitigating factors, it must impose a death sentence on the offender. Absent such a finding, the panel must sentence the offender to life imprisonment without parole or life imprisonment with parole eligibility after serving either 25 full years or 30 full years of imprisonment, or, if the offender is within the scope of the existing Sexual Predator Sentencing Law, the special type of life sentence required under R.C. 2971.03.

If the offender was tried by a jury, the trial jury weighs the aggravating circumstances proved against the mitigating factors. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances proved outweigh the mitigating factors, the jury must recommend that the death sentence be imposed on the offender. Absent such a finding, the trial jury must recommend one of the types of life sentences listed in the preceding paragraph. If the trial jury recommends a death sentence, the court must conduct its own balancing test, in the same manner and subject to the same considerations as are described in the preceding paragraph regarding sentencing by a three-judge panel, and must impose the sentence as described in that paragraph. If the jury recommends a life sentence, the court must impose the recommended sentence.

If the offender raised the matter of age at trial and was not found to have been at least 18 years of age at the time of the commission of the offense, the three-judge panel or the court, if the offender was tried by a jury, may not impose a death sentence on the offender. Rather, the offender must be sentenced to one of the life sentences listed in the second preceding paragraph.

Whenever a death sentence is imposed, the law provides for a mandatory appellate review, to be conducted in accordance with specified procedures and evidentiary standards, by the Ohio Supreme Court. In cases involving an aggravated murder committed before January 1, 1995, the appropriate court of appeals also conducts a mandatory appellate review, prior to the Supreme Court's review. The reviewing court may affirm a death sentence only if the court is persuaded from the record that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors present in the case and that the death sentence is the appropriate sentence in the case. If the death sentence is vacated upon appeal for any of a list of specified reasons, the law provides procedures for resentencing the offender.

The law provides special procedures, set forth in R.C. 2949.28, 2949.29, and 2949.31, regarding any convict sentenced to death who appears to be "insane" or who is found to be pregnant.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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