



H.B. 502

124th General Assembly
(As Introduced)

Reps. S. Smith, Seitz, DeWine, Patton, R. Miller, Allen, Raga, Lendrum, Beatty, Barrett, D. Miller, Oakar, Brinkman, Barnes, Britton, White, Driehaus, Jolivette, Trakas, Callender, Schneider, Krupinski, Perry, Jerse, Sykes, Hughes, Willamowski, Blasdel, Sullivan, Woodard, Strahorn, Redfern, Young, Seaver, Brown, Koziura

BILL SUMMARY

- Requires specified legislators and the Governor to jointly appoint an 18-member Capital Case Commission.
- Requires the Attorney General, the State Public Defender, and their staffs and employees to provide to the Commission, upon its request, research and technical services and support.
- Permits the Commission to seek and obtain research and technical services and support from any individual, organization, association, college, or university.
- Requires the Commission to review and study all issues that are related to the imposition and administration of capital punishment in Ohio, specifically with respect to: (1) resolving capital cases in a fair and orderly manner, (2) ensuring that all persons charged with a capital offense receive adequate representation, and (3) eliminating undue delay in capital cases.
- Includes within the duties described in the preceding dotpoint, the duty to: (1) not later than one year after the effective date of the bill, prepare and submit to legislative leadership and the Governor a preliminary report that sets forth its preliminary findings regarding the imposition and administration of capital sentencing and punishment in Ohio and its preliminary recommendations for improving Ohio's procedures in capital cases and procedures related to capital sentencing and punishment in Ohio, and (2) not later than 18 months after the effective date of this

section, prepare and submit to legislative leadership and the Governor a final report that sets forth its final findings and recommendations.

- Specifies that the Commission and all its subcommittees will cease to exist on the date on which the Commission submits its final report to the General Assembly and the Governor.

CONTENT AND OPERATION

Creation of the Capital Case Commission

Appointment

The bill requires the following specified public officials to jointly appoint an 18-member Capital Case Commission (Section 1(A)--all section references are to sections of the bill): (1) the Speaker of the House of Representatives, (2) the Minority Leader of the House of Representatives, (3) one member of the House of Representatives who is a member of the same political party as the Speaker and is designated by the Speaker, (4) one member of the House of Representatives who is a member of the same political party as the Minority Leader and is designated by the Minority Leader, (5) the President of the Senate, (6) the Minority Leader of the Senate, (7) one member of the Senate who is a member of the same political party as the President and is designated by the President, (8) one member of the Senate who is a member of the same political party as the Minority Leader and is designated by the Minority leader, and (9) the Governor.

Commission composition

The Commission must have the following composition:

- Two members must be members of the House of Representatives and must not be members of the same political party.
- Two members must be members of the Senate and must not be members of the same political party.
- Two members must be judges of a court of common pleas.
- Two members must be judges of a court of appeals.
- Two members must be prosecuting attorneys.
- Two members must be attorneys whose practice of law primarily involves the representation of criminal defendants and who are qualified under Rule

20 of the Rules of Superintendence for the Courts of Ohio to be appointed as lead counsel in capital cases or as appellate counsel in cases where a death penalty has been imposed.

- One member must be a representative of an organization that advocates for the rights of victims of crime.
- One member must be a representative of an organization that advocates for crime victims' families for reconciliation.
- One member must be a psychiatrist.
- One member must be a psychologist.
- Two members must be members of the general public.

The members of the Commission who are members of the House of Representatives or Senate must be different individuals than the House or Senate members who make the appointments to the Commission. Not more than nine members of the Commission may be members of the same political party. When all members are appointed, the Commission promptly must meet, select a chairperson and a vice-chairperson, and organize its activities. (Section 1(A).)

Support

The Attorney General, the State Public Defender, and the staff and employees of both of those public officials must provide to the Commission, upon its request, research and technical services and support. Independent of this provision of services and support, the Commission may seek and obtain research and technical services and support from any individual, organization, association, college, or university. (Section 1(A).)

Duties

Generally

The Commission must review and study all issues that are related to the imposition and administration of capital punishment in Ohio, specifically with respect to resolving capital cases in a fair and orderly manner, to ensuring that all persons charged with a capital offense receive adequate representation, and to eliminating undue delay in capital cases (Section 1(B)). The Commission must do all of the following (Section 1(B)):

(1) Review all aspects of Ohio's procedures in capital cases and procedures related to capital sentencing and punishment, including, but not limited to, the pre-

trial, trial, sentencing, direct appeal, and post conviction relief procedures related to capital cases and to capital sentencing and punishment;¹

(2) For all trials that involved a charge that a person committed a capital offense on or after October 19, 1981, review and analyze all aspects of the trial, including, but not limited to, facts of each case, including any aggravating and mitigating circumstances specified in the Revised Code or otherwise present in the case, the race, gender, religious preference, and economic status of the defendant and the victims, the result of the case, and the sentence imposed upon the defendant;

(3) Review and analyze in general the procedures in capital cases, including, but not limited to, the adequacy of counsel in all stages of capital cases and the sufficiency of any existing guidelines or rules for the appointment and performance of that counsel, the adequacy of funding for the defense of indigent defendants in capital cases, the process for judicial review in state postconviction and federal habeas corpus proceedings of the merits of constitutional claims present in or resulting from the cases, whether there is any disproportional impact from any aspect of capital case procedures and proceedings, whether there is discrimination in capital sentencing on any basis, whether a mentally retarded person should be sentenced to death, whether prosecutorial misconduct is present as a factor in the imposition of the death penalty, and the possibility that there are innocent persons who have been sentenced to death in Ohio;

(4) Obtain information regarding all aggravated murder cases in the two Category One counties selected under "*Duties in relation to Category One and Category Two counties*," below, and in the two Category Two counties selected under that provision that is necessary to comply with the provision described under "*Duties in relation to Category One and Category Two counties*," below, including, but not limited to, information, to the extent it can be obtained, regarding the reasons for the prosecutorial decision as to whether to prosecute the cases as capital cases or to prosecute them as aggravated murder cases that are not capital cases;

(5) Appoint subcommittees to assist in the discharge of its duties, including, but not limited to, the four subcommittees described in "*Subcommittees*," below, to perform the functions described in those divisions;

¹ As used in the bill, "capital case" means a case in which a person is charged with a capital offense. "Capital offense" means aggravated murder when the indictment or the count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances, and any other offense for which death may be imposed as a penalty. (Section 1(F) of the bill, by reference to R.C. 2901.02(B)--not in the bill.)

(6) Separate its findings regarding the information it collects under this section into the three data sets described in "*Data sets*," below, and utilize the information in those data sets for the purposes described in those provisions;

(7) Study other topics that the Commission determines appropriate for study because of their relationship to the commission of capital offenses, procedures in capital cases, sentencing or punishment in capital cases, or offenders and victims in capital cases;

(8) Make legislative recommendations for improving Ohio's procedures in capital cases and procedures related to capital sentencing and punishment in Ohio based on its review, studies, and analysis described in the seven preceding paragraphs and in "*Duties in relation to Category One and Category Two counties*," below;

(9) Not later than one year after the effective date of the bill, prepare and submit to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Governor a preliminary report that sets forth its preliminary findings regarding the imposition and administration of capital sentencing and punishment in Ohio and its preliminary recommendations for improving Ohio's procedures in capital cases and procedures related to capital sentencing and punishment in Ohio;

(10) Not later than 18 months after the effective date of the bill, prepare and submit to the persons identified in paragraph (9), above, a final report that sets forth its final findings regarding the imposition and administration of capital sentencing and punishment in Ohio and its final recommendations for improving Ohio's procedures in capital cases and procedures related to capital sentencing and punishment in Ohio.

Duties in relation to Category One and Category Two counties

Identifying counties. The Commission, for purposes described in "*Data sets*," below, must do all of the following (Section 1(D)(1)):

(1) Determine the two Category One counties in which the highest and second highest number of capital offense indictments have been returned, out of all Category One counties, on or after October 19, 1981, and not later than July 1, 2001;²

² "*Category One counties*" means Butler County, Cuyahoga County, Franklin County, Lorain County, Hamilton County, Lucas County, Mahoning County, Montgomery County, Stark County, and Summit County (Section 1(F)).

(2) Determine the two Category Two counties in which the highest and second highest number of capital offense indictments have been returned, out of all Category Two counties, on or after October 19, 1981, and not later than July 1, 2001;³

(3) Select the four counties determined under paragraphs (1) and (2), above, as the counties to be covered by the data set described in paragraph (2) of "Data sets," below.

Data sets. The Commission must separate its findings regarding the information it collects under the bill into the following three data sets (Section 1(D)(2)):

(1) A data set that contains information for all Ohio capital cases in which a defendant was sentenced on or after October 19, 1981, and not later than July 1, 2001. This data set must profile all defendants and victims of capital offenses in those cases and must summarize the processing of those cases, including, but not limited to, the time frames between major decision points in the cases, an analysis of the statutes and rules governing the litigation of those cases, and an in-depth study of those cases that required corrective appellate action.

(2) A data set that contains information for all cases in the four counties selected under "Identifying counties," above, in which a person was sentenced, on or after October 19, 1981, and not later than July 1, 2001, for aggravated murder. This data set must contain profiles and summaries of the type described in the preceding paragraph, as they relate to the cases described in this paragraph, must specify for each of those cases whether the case was a capital case or was not a capital case, and must specify for each of those cases, to the extent it can be determined, the reasons for the prosecutorial decision to prosecute the case as a capital case or to prosecute it as an aggravated murder case that was not a capital case. This data set must be further separated into a subcategory that contains the specified information for the two Category One counties selected under the bill and a separate subcategory that contains the specified information for the two Category Two counties selected under the bill. This data set must contain the specified information for all aggravated murder cases in the four subject counties, including capital cases and cases that are not capital cases.

(3) A data set that consists of a comparative analysis of the information contained in the data set described in the preceding paragraph to the information contained in the data set described in the second preceding paragraph, with the

³ "*Category Two counties*" means all Ohio counties that are not Category One counties (Section 1(F)).

analysis focusing on the difference between a capital case and an aggravated murder case that is not a capital case. Using a representative sample of the cases to which the data set described in the preceding paragraph, the analysis must include, but is not limited to, a determination of the incremental additional costs of prosecution, defense, and appeals of a capital case as compared to an aggravated murder case that is not a capital case. The Commission may utilize the information in the data sets described in either of the two preceding paragraphs for any other purpose in the performance of its duties under the bill.

Subcommittees

The Commission must appoint the following four subcommittees to perform the following functions, in the discharge of the Commission's duties (Section 1(C)):

- (1) A subcommittee to examine pre-trial issues related to capital cases;
- (2) A subcommittee to examine trial issues related to capital cases and sentencing, including, but not limited to, issues involving the guilt phase of the trial in a capital case and the sentencing phase of the trial in a capital case;
- (3) A subcommittee to examine issues related to direct appeals of the judgment of the trial court in capital cases and issues related to postconviction relief petitions and proceedings as they pertain to capital cases;
- (4) A Data Research Subcommittee to compile data and provide statistical analyses for the Commission and the subcommittees described in paragraphs (1) to (3).

Sunset

The Capital Case Commission and all subcommittees of the Commission will cease to exist on the date on which the Commission submits its final report to the General Assembly and the Governor (Section 1(E)).

HISTORY

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Introduced	02-12-02	p. 1381

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