



H.B. 260

126th General Assembly
(As Introduced)

Reps. S. Smith, S. Patton, Redfern, Miller, Skindell, Sykes, Boccieri, Beatty, Driehaus, Yates, Strahorn, Barrett, Woodard, Seaver, Brown, Brinkman, Kearns, Raga, Schneider, Seitz, J. Stewart, Koziura, Allen, Key, DeGeeter, Healy, Taylor

BILL SUMMARY

- Creates a temporary 20-member Capital Case Commission consisting of a representative of the Governor's office, a representative of the Attorney General's office, and 18 members jointly appointed by a nine-member group made up of the Governor, Speaker of the House, President of the Senate, Minority Leaders of the House and Senate, and a member designated by each of the previously specified legislative leaders.
- Directs the Commission to study the imposition and administration of capital punishment in Ohio and to report preliminary and final findings and recommendations to the General Assembly and Governor.
- Sets forth specific matters to be studied by the Commission, the organization of the Commission into subcommittees to focus on particular issues or carry out particular functions, and research methodologies for the Commission to follow.

CONTENT AND OPERATION

Definition of capital case

The bill, which is entirely uncodified law, defines "capital case" for use in the bill as a case in which a person is charged with a capital offense. A capital offense is similarly defined as an aggravated murder when the indictment or the count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in R.C. 2929.04(A) or any other

offense for which death may be imposed as a penalty.¹ (Section 1(F)(1) and (2); R.C. 2901.02(B), not in the bill.)

Creation and appointment of the Capital Case Commission

The bill creates the Capital Case Commission consisting of 20 members. Eighteen of the members are to be jointly appointed by a group consisting of the following nine members: the Governor, the Speaker of the House of Representatives, a House member of the same political party as the Speaker and designated by the Speaker, the Minority Leader of the House, a House member who belongs to the same political party as the Minority Leader and is designated by the Minority Leader, the President of the Senate, a senator of the same political party as the President and designated by the President, the Minority Leader of the Senate, and a senator who belongs to the same political party as the Minority Leader and is designated by the Minority Leader. The other two members of the Commission are a representative of the Governor's office appointed by the Governor and a representative of the Attorney General's office appointed by the Attorney General. (Section 1(A).)

The 18 members of the Commission who do not represent the Governor or Attorney General must include the following, not more than half of whom belong to the same political party (Section 1(A)):

- (1) Two members of the House of different political parties, neither of whom belongs to the group that makes the appointments;
- (2) Two members of the Senate of different political parties, neither of whom belongs to the group that makes the appointments;
- (3) Two court of common pleas judges;
- (4) Two court of appeals judges;
- (5) Two prosecuting attorneys;
- (6) Two attorneys whose practice of law primarily involves the representation of criminal defendants and who are qualified under Rule 20 of the

¹ R.C. 2929.04(A) lists ten types of aggravating circumstances based on the identity of the victim (e.g., the president or governor, a police officer, a witness to a crime), the time or place of the murder (e.g., while under detention, while fleeing after committing certain felonies), or other factors that make the offense especially heinous. The only capital offenses under current law are aggravated murder and terrorism when aggravated murder is the underlying offense.

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;

(7) One representative of an organization that advocates for the rights of crime victims;

(8) One representative of an organization that advocates for crime victims' families for reconciliation;

(9) One psychiatrist;

(10) One psychologist;

(11) Two members of the general public.

Organization of the Commission

Once all the members of the Commission have been named, the Commission must promptly meet, select a chairperson and a vice-chairperson, and organize its activities. The bill requires that the Attorney General, the State Public Defender, and their staffs provide to the Commission, upon its request, research and technical services and support. The Commission may also seek and obtain research and technical services and support from any individual, organization, association, college, or university. (Section 1(A).)

The bill directs the Commission to appoint the following four subcommittees to perform specific 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 under R.C. 2953.21 to 2953.23 as they pertain to capital cases;²

² A *postconviction relief proceeding* under R.C. 2953.21 through 2953.23 is a proceeding in the trial court that seeks to overturn a conviction on the basis of new DNA evidence or constitutional error at the trial.

(4) A Data Research Subcommittee to compile data and provide statistical analyses for the Commission and the three other mandated subcommittees.

Duties of the Commission

The bill directs the Commission to review and study all issues that are related to the imposition and administration of capital punishment in Ohio. In particular, the Commission is to examine matters relating to the resolution of capital cases in a fair and orderly manner, the ensuring that all persons charged with a capital offense receive adequate representation, and the elimination of undue delay in capital cases. The Commission's activities may not affect, delay, or interfere with any pending capital case, including any appeal of a capital case in state or federal court or any postconviction relief proceeding or habeas corpus proceeding related to a capital case. (Section 1(B).)

The bill specifically directs the Commission to 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 postconviction relief procedures related to capital cases and to capital sentencing and punishment;

(2) Review and analyze all aspects of every trial that involved a charge that a person committed a capital offense on or after October 19, 1981, including, but not limited to, the facts of each case, including any aggravating and mitigating circumstances specified in R.C. 2929.03 and 2929.04 or otherwise present in the case,³ the race, gender, religious preference, economic status, age, and education of the defendant and the victims, any mental impairment of the defendant, the adequacy of representation for the defendant and, if the defendant was indigent, the adequacy of funding for the defense of the defendant, the result of the case, and the sentence imposed upon the defendant. The Commission may not predict or attempt to predict the outcome in any pending case or critique the outcome in any resolved case but must compile data and statistics from the cases regarding all aspects of the trial.

(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

³ For aggravating circumstances, see footnote 2. Mitigating circumstances are circumstances that tend to diminish the heinousness of the offense, such as provocation by the victim, the youth or defective mental state of the offender, or the offender's lack of a prior criminal history.

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 four determined Category One and Category Two counties (see "**Research methodology**," below) that is necessary to compile the second data set described below under "**Research methodology**," 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 the Commission's duties, including, but not limited to, the four subcommittees described above under "**Organization of the Commission**";

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

(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 the review, studies, and analysis required under the bill;

(9) Within 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 the Commission's 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) Within 18 months after the effective date of the bill, prepare and submit to the Speaker, President, Minority Leaders, and Governor 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.

Research methodology

The bill separates Ohio's counties into two categories. Category One counties include Butler, Cuyahoga, Franklin, Lorain, Hamilton, Lucas, Mahoning, Montgomery, Stark, and Summit. Category Two counties are all other counties in the state. The Commission must determine the two Category One counties in which the highest and second highest number of capital offense indictments have been returned from October 19, 1981, through July 1, 2004, and the two Category Two counties in which the highest and second highest number of capital offense indictments have been returned from October 19, 1981, through July 1, 2004. (Section 1(D)(1) and (F)(3) and (4).)

The Commission must then create the following three distinct 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, 2004. This data set must profile all defendants and victims of capital offenses in those cases and 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 Category One and Category Two counties in which a person was sentenced, on or after October 19, 1981, and not later than July 1, 2004, for aggravated murder. For these cases, the data set must contain profiles and summaries of the types described in paragraph (1), specify for each case whether or not it was a capital case, and specify for each case, to the extent it can be determined, the reasons for the prosecutorial decision to prosecute the case as a capital case or non-capital aggravated murder case. The data set must be further separated into a subcategory for the two selected Category One counties and a subcategory for the two selected Category Two counties that contain the specified information.

(3) A data set that consists of a comparative analysis of the information contained in the data sets described in paragraphs (1) and (2). The analysis must focus on the differences between a capital case and a non-capital aggravated

murder case. Using a representative sample of the cases from the data set described in paragraph (2), the analysis must include, but not be limited to, a determination of the incremental additional costs of prosecution, defense, and appeals of a capital case as compared to a non-capital aggravated murder case. The Commission may utilize the information in the data sets described in paragraphs (1) and (2) for any other purpose in the performance of its duties.

Expiration of the Capital Case Commission

The bill provides that the Commission and all of its subcommittees will cease to exist on the date on which the Commission submits its final report to the General Assembly and the Governor (see "Duties of the Commission," above) (Section 1(E)).

HISTORY

ACTION	DATE
Introduced	05-17-05

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