

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1110 Session of
2009

INTRODUCED BY FERLO, FONTANA, KITCHEN, HUGHES, WASHINGTON,
FARNESE AND MELLOW, SEPTEMBER 29, 2009

REFERRED TO JUDICIARY, SEPTEMBER 29, 2009

AN ACT

1 Providing for the establishment of a select commission to study
2 all aspects of capital punishment in this Commonwealth; and
3 providing for a moratorium on the imposition of the death
4 penalty until completion and review of the commission's
5 findings.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Commission establishment.

9 There is hereby established a select commission to study all
10 aspects of capital punishment within this Commonwealth.

11 Section 2. Organization and operation of commission.

12 (a) Membership.--The commission shall be composed of 15
13 members who should reflect the diversity of the population of
14 this Commonwealth. Members will be appointed as follows:

15 (1) Nine members appointed by the Governor as follows:

16 (i) One member who represents victims from a list of
17 six victims submitted by the Office of Victim Advocate.

18 (ii) One member who represents victims from a list
19 of six victims submitted by Murder Victims' Families for

Human Rights.

(iii) Two members from the religious, academic and ethical communities.

(iv) One representative of the general public.

(v) One member from a list of three members submitted by the Pennsylvania Bar Association.

(vi) One member from a list of three members submitted by the Pennsylvania District Attorneys Association.

(vii) One member from a list of three members submitted by the Pennsylvania Association of Criminal Defense Lawyers or from a list of three members submitted by the Federal Community Defender Office.

(viii) One member from a list of six members submitted by a civil rights organization.

(2) One member appointed by the President pro tempore of the Senate.

(3) One member appointed by the Minority Leader of the Senate.

(4) One member appointed by the Majority Leader of the House of Representatives.

(5) One member appointed by the Minority Leader of the House of Representatives.

(6) The Attorney General or a designee of the Attorney General.

(7) One member of the judiciary appointed by the Chief Justice of the Supreme Court of Pennsylvania.

All appointments shall be made within 90 days of the effective date of this subsection.

(b) Vacancies.--Any vacancy in the membership shall be

1 filled in the same manner as the original appointment.

2 (c) Chairperson.--The commission shall choose a chairperson
3 from among its members.

4 (d) Compensation and expenses.--The members of the
5 commission shall serve without compensation but may be
6 reimbursed for necessary expenses incurred in the performance of
7 their duties within the limits of funds appropriated or
8 otherwise made available to the commission for its purposes.

9 (e) Staff.--The Joint State Government Commission shall
10 provide staffing for the work of the commission.

11 (f) Cooperation.--The commission is entitled to the
12 assistance and service of the employees of any State, county or
13 municipal department, board, bureau, commission or agency, as it
14 may require and as may be available to it for its purposes, and
15 to employ stenographic and clerical assistance and to incur
16 traveling or other miscellaneous expenses as may be necessary in
17 order to perform its duties within the limits of funds
18 appropriated or otherwise made available to it for its purposes.

19 (g) Hearings.--The commission shall meet and hold public
20 hearings at the places it designates during the sessions or
21 recesses of the General Assembly.

22 (h) Reports.--The commission shall report its findings and
23 recommendations to the Governor and the General Assembly no
24 later than 24 months from the date that this act takes effect.
25 The Governor and the General Assembly shall review the report
26 within 90 days and consider any recommendations made by the
27 commission.

28 Section 3. Powers and duties of commission.

29 (a) General power and duty.--The commission is charged to
30 study capital punishment in this Commonwealth and to determine

1 what policy recommendations, if any, would guarantee that, in
2 its application and administration, capital punishment in this
3 Commonwealth is free from bias and error. To that end, the
4 commission shall, among other things, review:

5 (1) The June 2001 protocols of the American Bar
6 Association's Section of Individual Rights and
7 Responsibilities.

8 (2) Recommendations made by government commissions
9 studying capital punishment in Illinois (2003), Massachusetts
10 (2004) and New Jersey (2007).

11 (3) Mandatory Justice: Eighteen Reforms to the Death
12 Penalty, a report of the Constitution Project's bipartisan,
13 blue-ribbon commission of capital punishment supporters and
14 opponents.

15 (4) The October 9, 2007, American Bar Association report
16 entitled Evaluating Fairness and Accuracy in State Death
17 Penalty Systems: The Pennsylvania Death Penalty Assessment
18 Report.

19 (5) The Final Report of the Pennsylvania Supreme Court
20 Committee on Racial and Gender Bias in the Justice System.

21 (b) Review of capital punishment process.--The commission
22 shall review every stage of the capital process, including
23 pretrial procedures, jury selection, defense, prosecution, trial
24 procedures, postconviction appeals and clemency procedures, and
25 shall make findings and public policy recommendations in each of
26 the following areas, including, but not limited to:

27 (1) The risk of innocent people's being sentenced to
28 death or executed. Where cases of wrongful conviction in
29 capital cases or cases that resulted in long or life
30 sentences exist in this Commonwealth, the commission shall

1 also look at the factors and characteristics of these cases
2 and determine additional areas of study or policy change
3 necessary.

4 (2) Whether the selection of defendants for capital
5 trials is arbitrary, unfair or discriminatory in any way,
6 looking specifically at race, geography and socioeconomic
7 background and any other relevant characteristics of both
8 defendants and victims. Whether there is unfair, arbitrary or
9 discriminatory variability in the sentencing phase or at any
10 stage of the process, in determining the presence of unfair
11 biases, the commission shall look not only at death penalty
12 cases, but also death-eligible cases where the death penalty
13 was not sought.

14 (3) Whether there is a significant difference in the
15 crimes of those selected for the punishment of death as
16 opposed to those who receive life in prison.

17 (4) What services exist in this Commonwealth for close
18 family members and loved ones of murder victims, whether
19 these services are sufficient, whether additional services
20 are provided in other states, whether additional services
21 should be provided in this Commonwealth and whether victims
22 rights and services are provided on an equal basis to all
23 surviving family members regardless of their support for,
24 opposition to or neutrality on the death penalty. In
25 addition, the commission shall also examine the availability
26 of services for family members who differ in their views on
27 capital punishment.

28 (5) The cost of the death penalty system, taking into
29 account all expenses from indictment to execution, as
30 compared to the cost of life in prison. In considering the

1 overall cost of the death penalty, the cost of all the
2 capital trials that result in life sentences, as well as the
3 death sentences that are reversed on appeal, must be factored
4 into the equation.

5 (6) What changes to the death penalty, if any, would
6 ensure a system that is fairly administered and consistently
7 applied, free from impermissible racial, ethnic or geographic
8 bias and would prevent the innocent from being sentenced to
9 death and execution.

10 (7) Whether the law provides adequate protections for
11 specific vulnerable populations such as persons with mental
12 retardation in accordance with the United States Supreme
13 Court ruling in Atkins v. Virginia, 536 U.S. 304, 122 S.Ct.
14 2242, and persons with mental illness.

15 (8) Whether the death penalty rationally serves a
16 legitimate penological interest, such as deterrence.

17 (c) Proposed legislation.--The commission may propose new
18 legislation, if necessary and appropriate.

19 Section 4. Moratorium on executions.

20 During the study by the commission, the Commonwealth shall
21 not carry out any executions. An individual who has been
22 sentenced to death may not be executed prior to November 30,
23 2010, and the Governor may not issue a warrant of execution
24 prior to November 30, 2010. During the moratorium, the
25 Commonwealth may continue to seek the imposition of the death
26 penalty and prosecute capital cases.

27 Section 5. Effective date.

28 This act shall take effect in 60 days.