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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2565 Session of  
2008

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INTRODUCED BY TANGRETTI, CURRY, VITALI, GIBBONS, BLACKWELL,  
BRENNAN, WATERS, CALTAGIRONE, STEIL, McILHATTAN, FRANKEL,  
HARKINS, PASHINSKI, SURRA, MANDERINO, CREIGHTON, BUXTON,  
FAIRCHILD, JOSEPHS, BISHOP, WHEATLEY, YOUNGBLOOD, SWANGER,  
HARHAI, MELIO, MUNDY, THOMAS, JAMES AND GOODMAN, MAY 27, 2008

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REFERRED TO COMMITTEE ON JUDICIARY, MAY 27, 2008

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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

1 of six victims submitted by Murder Victims' Families for  
2 Human Rights.

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

5 (iv) One representative of the general public.

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

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

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

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

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

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

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

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

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

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

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

(b) Vacancies.--Any vacancy in the membership shall be filled in the same manner as the original appointment.

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

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

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

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

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

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

Section 3. Powers and duties of commission.

(a) General power and duty.--The commission is charged to

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

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

9 (2) Recommendations made by government commissions  
10 studying capital punishment in Illinois (2003), Massachusetts  
11 (2004) and New Jersey (2007).

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

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

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

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

28 (1) The risk of innocent people's being sentenced to  
29 death or executed. Where cases of wrongful conviction in  
30 capital cases or cases that resulted in long or life

1 sentences exist in this Commonwealth, the commission shall  
2 also look at the factors and characteristics of these cases  
3 and determine additional areas of study or policy change  
4 necessary.

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

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

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

29 (5) The cost of the death penalty system, taking into  
30 account all expenses from indictment to execution, as

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

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

11 (7) Whether the law provides adequate protections for  
12 specific vulnerable populations such as persons with mental  
13 retardation in accordance with the United States Supreme  
14 Court ruling in Atkins v. Virginia, 536 U.S. 304, 122 S.Ct.  
15 2242, and persons with mental illness.

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

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

#### 20 Section 4. Moratorium on executions.

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

#### 28 Section 5. Effective date.

29 This act shall take effect July 1, 2008.