

As Introduced

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Senator Smith

**Cosponsors: Senators Seitz, Padgett, Miller, R., Miller, D., Roberts, Morano,
Niehaus**

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A B I L L

To create a Capital Case Commission to study the 1
imposition and administration of capital 2
punishment in Ohio and to make recommendations for 3
improving Ohio's procedures in capital cases and 4
its capital sentencing procedures. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. (A) A sixteen-member Capital Case Commission shall 6
be established as provided in this section. The Speaker and the 7
Minority Leader of the House of Representatives, one member of the 8
House of Representatives who is a member of the same political 9
party as the Speaker and is designated by the Speaker, one member 10
of the House of Representatives who is a member of the same 11
political party as the Minority Leader and is designated by the 12
Minority Leader, the President and Minority Leader of the Senate, 13
one member of the Senate who is a member of the same political 14
party as the President and is designated by the President, and one 15
member of the Senate who is a member of the same political party 16
as the Minority Leader and is designated by the Minority Leader 17
shall jointly appoint the members of the Commission. 18

The members of the Commission shall be appointed in 19

accordance with the criteria described in this paragraph. Two 20
members of the Commission shall be members of the House of 21
Representatives and shall not be members of the same political 22
party. Two members of the Commission shall be members of the 23
Senate and shall not be members of the same political party. Two 24
members of the Commission shall be judges of a court of common 25
pleas, two members shall be judges of a court of appeals, two 26
members shall be prosecuting attorneys, two members shall be 27
attorneys whose practice of law primarily involves the 28
representation of criminal defendants and who are qualified under 29
Rule 20 of the Rules of Superintendence for the Courts of Ohio to 30
be appointed as lead counsel in capital cases or as appellate 31
counsel in cases where a death penalty has been imposed, one 32
member shall be a representative of an organization that advocates 33
for the rights of victims of crime, one member shall be a 34
representative of an organization that advocates for crime 35
victims' families for reconciliation, and two members shall be 36
members of the general public. The members of the Commission who 37
are members of the House of Representatives or Senate shall be 38
different individuals than the House or Senate members who make 39
the appointments to the Commission. Not more than eight members of 40
the Commission shall be members of the same political party. When 41
all members are appointed, the Commission promptly shall meet, 42
select a chairperson and a vice-chairperson, and organize its 43
activities. 44

The Attorney General, the State Public Defender, and the 45
staff and employees of both of those public officials shall 46
provide to the Commission, upon its request, research and 47
technical services and support. Independent of this provision of 48
services and support, the Commission may seek and obtain research 49
and technical services and support from any individual, 50
organization, association, college, or university. 51

(B) The Commission shall 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. The activities of the Commission shall 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, and the case shall proceed during the Commission's performance of its activities and duties as if the Commission had not been created. The Commission shall do all of the following:

(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) 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, the facts of each case, including any aggravating and mitigating circumstances specified in sections 2929.03 and 2929.04 of the Revised Code or otherwise present in the case, 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. In performing the duties prescribed in this division, the Commission shall not predict or attempt to predict the outcome in any pending case or critique the outcome in

any resolved case but shall compile data and statistics from the 84
cases regarding all aspects of the trial as described in this 85
division. 86

(3) Review and analyze in general the procedures in capital 87
cases, including, but not limited to, the adequacy of counsel in 88
all stages of capital cases and the sufficiency of any existing 89
guidelines or rules for the appointment and performance of that 90
counsel, the adequacy of funding for the defense of indigent 91
defendants in capital cases, the process for judicial review in 92
state postconviction and federal habeas corpus proceedings of the 93
merits of constitutional claims present in or resulting from the 94
cases, whether there is any disproportional impact from any aspect 95
of capital case procedures and proceedings, whether there is 96
discrimination in capital sentencing, on any illegal basis, 97
whether prosecutorial misconduct is present as a factor in the 98
imposition of the death penalty, and the possibility that there 99
are innocent persons who have been sentenced to death in Ohio; 100

(4) Obtain information regarding all aggravated murder cases 101
in the two Category One counties selected under division (D)(1) of 102
this section and in the two Category Two counties selected under 103
that division that is necessary to comply with division (D)(2)(b) 104
of this section, including, but not limited to, information, to 105
the extent it can be obtained, regarding the reasons for the 106
prosecutorial decision as to whether to prosecute the cases as 107
capital cases or to prosecute them as aggravated murder cases that 108
are not capital cases; 109

(5) Appoint subcommittees to assist in the discharge of its 110
duties, including, but not limited to, the four subcommittees 111
described in divisions (C)(1) to (4) of this section to perform 112
the functions described in those divisions; 113

(6) Separate its findings regarding the information it 114
collects under this section into the three data sets described in 115

divisions (D)(2)(a), (b), and (c) of this section, and utilize the 116
information in those data sets for the purposes described in those 117
divisions; 118

(7) Study other topics that the Commission determines 119
appropriate for study because of their relationship to the 120
commission of capital offenses, procedures in capital cases, 121
sentencing or punishment in capital cases, or offenders and 122
victims in capital cases; 123

(8) Make legislative recommendations for improving Ohio's 124
procedures in capital cases and procedures related to capital 125
sentencing and punishment in Ohio based on its review, studies, 126
and analysis described in divisions (B)(1) to (7) and (D) of this 127
section; 128

(9) Not later than one year after the effective date of this 129
section, prepare and submit to the Speaker and Minority Leader of 130
the House of Representatives, the President and Minority Leader of 131
the Senate, and the Governor a preliminary report that sets forth 132
its preliminary findings regarding the imposition and 133
administration of capital sentencing and punishment in Ohio and 134
its preliminary recommendations for improving Ohio's procedures in 135
capital cases and procedures related to capital sentencing and 136
punishment in Ohio; 137

(10) Not later than eighteen months after the effective date 138
of this section, prepare and submit to the persons identified in 139
division (B)(9) of this section a final report that sets forth its 140
final findings regarding the imposition and administration of 141
capital sentencing and punishment in Ohio and its final 142
recommendations for improving Ohio's procedures in capital cases 143
and procedures related to capital sentencing and punishment in 144
Ohio. 145

(C) The Commission shall appoint the following four 146

subcommittees to perform the following functions, in the discharge 147
of the Commission's duties under divisions (B) and (D) of this 148
section: 149

(1) A subcommittee to examine pre-trial issues related to 150
capital cases; 151

(2) A subcommittee to examine trial issues related to capital 152
cases and sentencing, including, but not limited to, issues 153
involving the guilt phase of the trial in a capital case and the 154
sentencing phase of the trial in a capital case; 155

(3) A subcommittee to examine issues related to direct 156
appeals of the judgment of the trial court in capital cases and 157
issues related to postconviction relief petitions and proceedings 158
under sections 2953.21 to 2953.23 of the Revised Code as they 159
pertain to capital cases; 160

(4) A Data Research Subcommittee to compile data and provide 161
statistical analyses for the Commission and the subcommittees 162
described in divisions (C)(1) to (3) of this section. 163

(D)(1) The Commission, for purposes of division (D)(2) of 164
this section, shall do all of the following: 165

(a) Determine the two Category One counties in which the 166
highest and second highest number of capital offense indictments 167
have been returned, out of all Category One counties, on or after 168
October 19, 1981, and not later than July 1, 2006; 169

(b) Determine the two Category Two counties in which the 170
highest and second highest number of capital offense indictments 171
have been returned, out of all Category Two counties, on or after 172
October 19, 1981, and not later than July 1, 2006; 173

(c) Select the four counties determined under divisions 174
(D)(1)(a) and (b) of this section as the counties to be covered by 175
the data set described in division (D)(2)(b) of this section. 176

(2) The Commission shall separate its findings regarding the information it collects under this section into the following three data sets:

(a) 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, 2006. This data set shall profile all defendants and victims of capital offenses in those cases and shall 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.

(b) A data set that contains information for all cases in the four counties selected under division (D)(1) of this section in which a person was sentenced, on or after October 19, 1981, and not later than July 1, 2006, for aggravated murder. This data set shall contain profiles and summaries of the type described in division (D)(2)(a) of this section, as they relate to the cases described in this division, shall specify for each of those cases whether the case was a capital case or was not a capital case, and shall 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 shall be further separated into a subcategory that contains the specified information for the two Category One counties selected under division (D)(1) of this section and a separate subcategory that contains the specified information for the two Category Two counties selected under that division. This data set shall contain the specified information for all aggravated murder cases in the four subject counties, including capital cases and cases that are not capital cases.

(c) A data set that consists of a comparative analysis of the information contained in the data set described in division (D)(2)(b) of this section to the information contained in the data set described in division (D)(2)(a) of this section, with the 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 division (D)(2)(b) of this section pertains, the analysis shall 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 an aggravated murder case that is not a capital case. The Commission may utilize the information in the data sets described in divisions (D)(2)(a) and (b) of this section for any other purpose in the performance of its duties under this section.

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

(F) As used in this section:

(1) "Capital case" means a case in which a person is charged with a capital offense.

(2) "Capital offense" has the same meaning as in section 2901.02 of the Revised Code.

(3) "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.

(4) "Category Two counties" means all counties in this state that are not Category One counties.