

106TH CONGRESS
2^D SESSION

S. 2463

To institute a moratorium on the imposition of the death penalty at the Federal and State level until a National Commission on the Death Penalty studies its use and policies ensuring justice, fairness, and due process are implemented.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2000

Mr. FEINGOLD (for himself and Mr. LEVIN) introduced the following bill;
which was read twice and referred to the Committee on the judiciary

A BILL

To institute a moratorium on the imposition of the death penalty at the Federal and State level until a National Commission on the Death Penalty studies its use and policies ensuring justice, fairness, and due process are implemented.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Death Pen-
5 alty Moratorium Act of 2000”.

1 **TITLE I—MORATORIUM ON THE**
2 **DEATH PENALTY**

3 **SEC. 101. FINDINGS.**

4 Congress makes the following findings:

5 (1) Death sentences are disproportionately vis-
6 ited on the poor:

7 (A) About 90 percent of people facing cap-
8 ital charges cannot afford their own attorney.

9 (B) No State has met standards developed
10 by the American Bar Association (ABA) for ap-
11 pointment, performance, and compensation of
12 counsel for indigent prisoners.

13 (2) There is ample evidence that the death pen-
14 alty is applied disproportionately to members of cer-
15 tain racial and ethnic groups:

16 (A) Although African-Americans constitute
17 only 13 percent of the American population,
18 since 1976 African-Americans account for 35
19 percent of those executed, 43 percent of those
20 who wait on death row nationwide, and 67 per-
21 cent of those who wait on death row in the Fed-
22 eral system. Although only 50 percent of mur-
23 der victims are white, fully 84 percent of the
24 victims in death penalty cases were white.

1 (B) A study conducted by the House Judi-
2 ciary Subcommittee on Civil and Constitutional
3 Rights in 1994 concluded that 89 percent of de-
4 fendants selected for capital prosecution under
5 the Anti-Drug Abuse Act of 1988 have been ei-
6 ther African-American or Hispanic American.

7 (C) In 1990, the General Accounting Of-
8 fice reported “a pattern of evidence indicating
9 racial disparities in charging, sentencing, and
10 imposition of the death penalty”.

11 (3) Prisoner appeals have been severely cur-
12 tailed, increasing the risk of imprisonment and exe-
13 cution of innocent people:

14 (A) In a series of rulings since 1976, the
15 Supreme Court has restricted the rights of
16 death row prisoners to appeal their convictions
17 and death sentences in Federal courts, even in
18 cases where prisoners present compelling evi-
19 dence of innocence.

20 (B) In 1996, new legislation limited Fed-
21 eral court review of death penalty appeals and
22 severely curtailed public funding of legal aid
23 services for death row prisoners.

1 **SEC. 102. FEDERAL AND STATE DEATH PENALTY MORATO-**
 2 **RIUM.**

3 Neither the Federal Government nor any State shall
 4 carry out the death penalty until Congress considers the
 5 final findings and recommendations of the National Com-
 6 mission on the Death Penalty in the report submitted
 7 under section 202(c)(2) and enacts legislation repealing
 8 this section and implementing or rejecting the guidelines
 9 and procedures recommended by the Commission.

10 **TITLE II—NATIONAL COMMIS-**
 11 **SION ON THE DEATH PEN-**
 12 **ALTY**

13 **SEC. 201. ESTABLISHMENT OF COMMISSION.**

14 (a) ESTABLISHMENT.—There is established a com-
 15 mission to be known as the National Commission on the
 16 Death Penalty (in this title referred to as the “Commis-
 17 sion”).

18 (b) MEMBERSHIP.—

19 (1) APPOINTMENT.—Members of the Commis-
 20 sion shall be appointed by the President in consulta-
 21 tion with the Attorney General and the Chairmen
 22 and Ranking Members of the Committees on the Ju-
 23 diciary of the House of Representatives and the Sen-
 24 ate.

25 (2) COMPOSITION.—The Commission shall be
 26 composed of 15 members, of whom—

1 (A) 3 members shall be Federal or State
2 prosecutors;

3 (B) 3 members shall be attorneys experi-
4 enced in capital defense;

5 (C) 2 members shall be current or former
6 Federal or State judges; and

7 (D) 2 members shall be current or former
8 Federal or State law enforcement officials; and

9 (E) 5 members shall be individuals from
10 the public or private sector who have knowledge
11 or expertise, whether by experience or training,
12 in matters to be studied by the Commission,
13 which may include—

14 (i) officers or employees of the Fed-
15 eral Government or State or local govern-
16 ments;

17 (ii) members of academia, nonprofit
18 organizations, the religious community, or
19 industry; and

20 (iii) other interested individuals.

21 (3) BALANCED VIEWPOINTS.—In appointing the
22 members of the Commission, the President shall, to
23 the maximum extent practicable, ensure that the
24 membership of the Commission is fairly balanced
25 with respect to the opinions of the members of the

1 Commission regarding support for or opposition to
2 the use of the death penalty.

3 (4) DATE.—The appointments of the initial
4 members of the Commission shall be made not later
5 than 30 days after the date of enactment of this
6 Act.

7 (c) PERIOD OF APPOINTMENT; VACANCIES.—Mem-
8 bers shall be appointed for the life of the Commission. Any
9 vacancy in the Commission shall not affect its powers, but
10 shall be filled in the same manner as the original appoint-
11 ment.

12 (d) INITIAL MEETING.—Not later than 30 days after
13 all initial members of the Commission have been ap-
14 pointed, the Commission shall hold its first meeting.

15 (e) MEETINGS.—The Commission shall meet at the
16 call of the Chairperson.

17 (f) QUORUM.—A majority of the members of the
18 Commission shall constitute a quorum for conducting
19 business, but a lesser number of members may hold hear-
20 ings.

21 (g) CHAIR.—The President shall designate 1 member
22 appointed under subsection (a) to serve as the Chair of
23 the Commission.

24 (h) RULES AND PROCEDURES.—The Commission
25 shall adopt rules and procedures to govern its proceedings.

1 **SEC. 202. DUTIES OF THE COMMISSION.**

2 (a) STUDY.—

3 (1) IN GENERAL.—The Commission shall con-
4 duct a thorough study of all matters relating to the
5 administration of the death penalty to determine
6 whether it comports with constitutional principles
7 and requirements of fairness, justice, equality, and
8 due process.

9 (2) MATTERS STUDIED.—The matters studied
10 by the Commission shall include the following:

11 (A) Racial disparities in capital charging,
12 prosecuting, and sentencing decisions.

13 (B) Disproportionality in capital charging,
14 prosecuting, and sentencing decisions based on
15 geographic location and income status of de-
16 fendant or any other factor resulting in such
17 disproportionality.

18 (C) Adequacy of representation of capital
19 defendants, including consideration of the ABA
20 “Guidelines for the Appointment and Perform-
21 ance of Counsel in Death Penalty Cases”
22 (adopted February 1989) and Association poli-
23 cies intended to encourage competency of coun-
24 sel in capital cases (adopted February 1979,
25 February 1988, February 1990, and August
26 1996).

1 (D) Whether innocent persons have been
2 sentenced to death and the reasons these
3 wrongful convictions have occurred.

4 (E) Whether the Federal government
5 should seek the death penalty in a State with
6 no death penalty.

7 (F) Whether courts are adequately exer-
8 cising independent judgment on the merits of
9 constitutional claims in State post-conviction
10 and Federal habeas corpus proceedings.

11 (G) Whether mentally retarded persons
12 and persons who were under the age of 18 at
13 the time of their offenses should be sentenced
14 to death after conviction of death-eligible of-
15 fenses.

16 (H) Procedures to ensure that persons sen-
17 tenced to death have access to forensic evidence
18 and modern testing of such evidence, including
19 DNA testing, when such testing could result in
20 new evidence of innocence.

21 (I) Any other law or procedure to ensure
22 that death penalty cases are administered fairly
23 and impartially, in accordance with the Con-
24 stitution.

25 (b) GUIDELINES AND PROCEDURES.—

1 (1) IN GENERAL.—Based on the study con-
2 ducted pursuant to subsection (a), the Commission
3 shall establish guidelines and procedures for the ad-
4 ministration of the death penalty consistent with
5 paragraph (2).

6 (2) INTENT OF GUIDELINES AND PROCE-
7 DURES.—The guidelines and procedures required by
8 this subsection shall—

9 (A) ensure that the death penalty cases are
10 administered fairly and impartially, in accord-
11 ance with due process;

12 (B) minimize the risk that innocent per-
13 sons may be executed; and

14 (C) ensure that the death penalty is not
15 administered in a racially discriminatory man-
16 ner.

17 (c) REPORT.—

18 (1) PRELIMINARY REPORT.—Not later than 1
19 year after the date of enactment of this Act, the
20 Commission shall submit to the President, the Attor-
21 ney General, and the Congress a preliminary report,
22 which shall contain a preliminary statement of find-
23 ings and conclusions.

24 (2) FINAL REPORT.—Not later than 2 years
25 after the date of enactment of this Act, the Commis-

1 sion shall submit a report to the President, the At-
2 torney General, and the Congress which shall con-
3 tain a detailed statement of the findings and conclu-
4 sions of the Commission, together with its rec-
5 ommendations for such legislation and administra-
6 tive actions implementing the guidelines and proce-
7 dures as it considers appropriate.

8 **SEC. 203. POWERS OF THE COMMISSION.**

9 (a) INFORMATION FROM FEDERAL AND STATE
10 AGENCIES.—The Commission may secure directly from
11 any Federal or State department or agency such informa-
12 tion as the Commission considers necessary to carry out
13 the provisions of this title. Upon request of the Chair-
14 person of the Commission, the head of such department
15 or agency shall furnish such information to the Commis-
16 sion.

17 (b) POSTAL SERVICES.—The Commission may use
18 the United States mails in the same manner and under
19 the same conditions as other departments and agencies of
20 the Federal Government.

21 (c) GIFTS.—The Commission may accept, use, and
22 dispose of gifts or donations of services or property.

23 (d) HEARINGS.—The Commission or, at its direction,
24 any subcommittee or member of the Commission, may, for
25 the purpose of carrying out the provisions of this title—

1 (1) hold such hearings, sit and act at such
2 times and places, take such testimony, receive such
3 evidence, administer such oaths; and

4 (2) require, by subpoena or otherwise, the at-
5 tendance and testimony of such witnesses and the
6 production of such books, records, correspondence,
7 memoranda, papers, documents, tapes, and materials
8 as the Commission or such subcommittee or member
9 considers advisable.

10 (e) ISSUANCE AND ENFORCEMENT OF SUB-
11 POENAS.—

12 (1) ISSUANCE.—Subpoenas issued pursuant to
13 subsection (d) shall bear the signature of the Chair-
14 person of the Commission and shall be served by any
15 person or class of persons designated by the Chair-
16 person for that purpose.

17 (2) ENFORCEMENT.—In the case of contumacy
18 or failure to obey a subpoena issued under sub-
19 section (d), the district court of the United States
20 for the judicial district in which the subpoenaed per-
21 son resides, is served, or may be found may issue an
22 order requiring such person to appear at any des-
23 ignated place to testify or to produce documentary
24 or other evidence. Any failure to obey the order of

1 the court may be punished by the court as a con-
2 tempt.

3 (3) TESTIMONY OF PERSONS IN CUSTODY.—A
4 court of the United States within the jurisdiction in
5 which testimony of a person held in custody is
6 sought by the Commission or within the jurisdiction
7 of which such person is held in custody, may, upon
8 application by the Attorney General, issue a writ of
9 habeas corpus ad testificandum requiring the custo-
10 dian to produce such person before the Commission,
11 or before a member of the Commission or a member
12 of the staff of the Commission designated by the
13 Commission for such purpose.

14 (f) WITNESS ALLOWANCES AND FEES.—The provi-
15 sions of section 1821 of title 28, United States Code, shall
16 apply to witnesses requested or subpoenaed to appear at
17 any hearing of the Commission. The per diem and mileage
18 allowances for witnesses shall be paid from funds available
19 to pay the expenses of the Commission.

20 **SEC. 204. COMMISSION PERSONNEL MATTERS.**

21 (a) COMPENSATION OF MEMBERS.—Members of the
22 Commission shall serve without compensation for their
23 services to the Commission.

24 (b) TRAVEL EXPENSES.—The members of the Com-
25 mission shall be allowed travel expenses, including per

1 diem in lieu of subsistence, at rates authorized for employ-
2 ees of agencies under subchapter I of chapter 57 of title
3 5, United States Code, while away from their homes or
4 regular places of business in the performance of services
5 for the Commission.

6 (c) STAFF.—

7 (1) IN GENERAL.—The Chairperson of the
8 Commission may, without regard to the civil service
9 laws and regulations, appoint and terminate an execu-
10 tive director and such other additional personnel as
11 may be necessary to enable the Commission to per-
12 form its duties. The employment of an executive di-
13 rector shall be subject to confirmation by the Com-
14 mission.

15 (2) COMPENSATION.—The Chairperson of the
16 Commission may fix the compensation of the execu-
17 tive director and other personnel without regard to
18 the provisions of chapter 51 and subchapter III of
19 chapter 53 of title 5, United States Code, relating
20 to classification of positions and General Schedule
21 pay rates, except that the rate of pay for the execu-
22 tive director and other personnel may not exceed the
23 rate payable for level V of the Executive Schedule
24 under section 5316 of such title.

1 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any
2 Federal Government employee may be detailed to the
3 Commission without reimbursement, and such detail shall
4 be without interruption or loss of civil service status or
5 privilege.

6 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-
7 TENT SERVICES.—The Chairperson of the Commission
8 may procure temporary and intermittent services under
9 section 3109(b) of title 5, United States Code, at rates
10 for individuals which do not exceed the daily equivalent
11 of the annual rate of basic pay prescribed for level V of
12 the Executive Schedule under section 5316 of such title.

13 **SEC. 205. TERMINATION OF THE COMMISSION.**

14 The Commission shall terminate 90 days after the
15 date on which the Commission submits its report under
16 section 202.

17 **SEC. 206. FUNDING.**

18 (a) IN GENERAL.—The Commission may expend not
19 to exceed \$850,000 as provided by subsection (b) to carry
20 out this title.

21 (b) AVAILABILITY.—Sums appropriated to the De-
22 partment of Justice shall be made available to carry out
23 this title.

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