

106TH CONGRESS
2D SESSION

H. R. 5236

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2000

Mr. JACKSON of Illinois introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To institute a moratorium on the imposition of the death penalty at the Federal level until a Commission on the Federal 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 “Federal Death Penalty
5 Moratorium Act of 2000”.

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

3 **SEC. 101. FINDINGS.**

4 Congress makes the following findings:

5 (1) The administration of the Federal death
6 penalty should be consistent with our Nation's fun-
7 damental principles of justice, equality, and due
8 process.

9 (2) The fairness of the administration of the
10 Federal death penalty, however, has recently come
11 under serious scrutiny, specifically raising questions
12 of racial and geographic disparities:

13 (A) About three-quarters of Federal death
14 row inmates are members of minority groups.

15 (B) A report released by the Department
16 of Justice on September 12, 2000, found that
17 about 80 percent of defendants who were
18 charged with death-eligible offenses under Fed-
19 eral law and whose cases were submitted by the
20 United States attorneys under the Depart-
21 ment's death penalty decision-making proce-
22 dures were African American, Hispanic Amer-
23 ican, or members of other minority groups.

24 (C) The Department of Justice report
25 shows that United States attorneys in only 5 of

1 94 Federal districts—1 each in Virginia, Mary-
2 land, Puerto Rico, and 2 in New York—submit
3 40 percent of all cases in which the death pen-
4 alty is considered.

5 (D) The Department of Justice report
6 shows that United States attorneys who have
7 frequently recommended seeking the death pen-
8 alty are often from States with a high number
9 of executions under State law, including Texas,
10 Virginia, and Missouri.

11 (E) The Department of Justice report
12 shows that white defendants are more likely
13 than black defendants to negotiate plea bar-
14 gains saving them from the death penalty in
15 Federal cases.

16 (F) A study conducted by the House Judi-
17 ciary Subcommittee on Civil and Constitutional
18 Rights in 1994 concluded that 89 percent of de-
19 fendants selected for capital prosecution under
20 the Anti-Drug Abuse Act of 1988 have been ei-
21 ther African American or Hispanic American.

22 **SEC. 102. FEDERAL DEATH PENALTY MORATORIUM.**

23 The Federal Government shall not carry out any sen-
24 tence of death imposed under Federal law until Congress
25 considers the final findings and recommendations of the

1 Commission on the Federal Death Penalty in the report
2 submitted under section 202(c)(2) and enacts legislation
3 repealing this section and implementing or rejecting the
4 guidelines and procedures recommended by the Commis-
5 sion.

6 **TITLE II—COMMISSION ON THE**
7 **FEDERAL DEATH PENALTY**

8 **SEC. 201. ESTABLISHMENT OF COMMISSION.**

9 (a) ESTABLISHMENT.—There is established a com-
10 mission to be known as the Commission on the Federal
11 Death Penalty (in this title referred to as the “Commis-
12 sion”).

13 (b) MEMBERSHIP.—

14 (1) APPOINTMENT.—Members of the Commis-
15 sion shall be appointed by the President in consulta-
16 tion with the Attorney General and the Chairmen
17 and Ranking Members of the Committees on the Ju-
18 diciary of the House of Representatives and the Sen-
19 ate.

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

22 (A) 3 members shall be Federal prosecu-
23 tors;

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

1 (C) 2 members shall be current or former
2 Federal judges;

3 (D) 2 members shall be current or former
4 Federal law enforcement officials; and

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

10 (i) officers or employees of the Fed-
11 eral Government or State or local govern-
12 ments;

13 (ii) members of academia, nonprofit
14 organizations, the religious community, or
15 industry; and

16 (iii) other interested individuals.

17 (3) BALANCED VIEWPOINTS.—In appointing the
18 members of the Commission, the President shall, to
19 the maximum extent practicable, ensure that the
20 membership of the Commission is fairly balanced
21 with respect to the opinions of the members of the
22 Commission regarding support for or opposition to
23 the use of the death penalty.

24 (4) DATE.—The appointments of the initial
25 members of the Commission shall be made not later

1 than 30 days after the date of enactment of this
2 Act.

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

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

11 (e) MEETINGS.—The Commission shall meet at the
12 call of the Chairperson.

13 (f) QUORUM.—A majority of the members of the
14 Commission shall constitute a quorum for conducting
15 business, but a lesser number of members may hold hear-
16 ings.

17 (g) CHAIR.—The President shall designate 1 member
18 appointed under subsection (a) to serve as the Chair of
19 the Commission.

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

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

23 (a) STUDY.—

24 (1) IN GENERAL.—The Commission shall con-
25 duct a thorough study of all matters relating to the

1 administration of the death penalty at the Federal
2 level to determine whether it comports with constitu-
3 tional principles and requirements of fairness, jus-
4 tice, equality, and due process.

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

7 (A) Racial disparities in capital charging,
8 prosecuting, and sentencing decisions.

9 (B) Disproportionality in capital charging,
10 prosecuting, and sentencing decisions based on,
11 or in correlation to, the geographic location and
12 income status of defendant or any other factor
13 resulting in such disproportionality.

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

23 (D) Whether innocent persons have been
24 sentenced to death and the reasons these
25 wrongful convictions have occurred.

1 (E) Whether the Federal Government
2 should seek the death penalty in any State in
3 which State statutes do not provide for imposi-
4 tion of the death penalty.

5 (F) Procedures to ensure that persons sen-
6 tenced to death have access to forensic evidence
7 and modern testing of such evidence, including
8 DNA testing, when such testing could result in
9 new evidence of innocence.

10 (G) Any other law or procedure to ensure
11 that death penalty cases are administered fairly
12 and impartially, in accordance with the Con-
13 stitution.

14 (b) GUIDELINES AND PROCEDURES.—

15 (1) IN GENERAL.—Based on the study con-
16 ducted pursuant to subsection (a), the Commission
17 shall establish guidelines and procedures for the ad-
18 ministration of the Federal death penalty consistent
19 with paragraph (2).

20 (2) INTENT OF GUIDELINES AND PROCE-
21 DURES.—The guidelines and procedures required by
22 this subsection shall—

23 (A) ensure that the death penalty cases are
24 administered fairly and impartially, in accord-
25 ance with due process;

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

3 (C) ensure that the death penalty is not
4 administered in a racially discriminatory man-
5 ner.

6 (c) REPORT.—

7 (1) PRELIMINARY REPORT.—Not later than 1
8 year after the date of enactment of this Act, the
9 Commission shall submit to the President, the Attor-
10 ney General, and the Congress a preliminary report,
11 which shall contain a preliminary statement of find-
12 ings and conclusions.

13 (2) FINAL REPORT.—Not later than 2 years
14 after the date of enactment of this Act, the Commis-
15 sion shall submit a report to the President, the At-
16 torney General, and the Congress which shall con-
17 tain a detailed statement of the findings and conclu-
18 sions of the Commission, together with its rec-
19 ommendations for such legislation and administra-
20 tive actions implementing the guidelines and proce-
21 dures as it considers appropriate.

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

23 (a) INFORMATION FROM FEDERAL AND STATE
24 AGENCIES.—The Commission may secure directly from
25 any Federal or State department or agency such informa-

1 tion as the Commission considers necessary to carry out
2 the provisions of this title. Upon request of the Chair-
3 person of the Commission, the head of such department
4 or agency shall furnish such information to the Commis-
5 sion.

6 (b) POSTAL SERVICES.—The Commission may use
7 the United States mails in the same manner and under
8 the same conditions as other departments and agencies of
9 the Federal Government.

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

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

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

18 (2) require, by subpoena or otherwise, the at-
19 tendance and testimony of such witnesses and the
20 production of such books, records, correspondence,
21 memoranda, papers, documents, tapes, and materials
22 as the Commission or such subcommittee or member
23 considers advisable.

24 (e) ISSUANCE AND ENFORCEMENT OF SUB-
25 POENAS.—

1 (1) ISSUANCE.—Subpoenas issued pursuant to
2 subsection (d) shall bear the signature of the Chair-
3 person of the Commission and shall be served by any
4 person or class of persons designated by the Chair-
5 person for that purpose.

6 (2) ENFORCEMENT.—In the case of contumacy
7 or failure to obey a subpoena issued under sub-
8 section (d), the district court of the United States
9 for the judicial district in which the subpoenaed per-
10 son resides, is served, or may be found may issue an
11 order requiring such person to appear at any des-
12 ignated place to testify or to produce documentary
13 or other evidence. Any failure to obey the order of
14 the court may be punished by the court as a con-
15 tempt.

16 (3) TESTIMONY OF PERSONS IN CUSTODY.—A
17 court of the United States within the jurisdiction in
18 which testimony of a person held in custody is
19 sought by the Commission or within the jurisdiction
20 of which such person is held in custody, may, upon
21 application by the Attorney General, issue a writ of
22 habeas corpus ad testificandum requiring the custo-
23 dian to produce such person before the Commission,
24 or before a member of the Commission or a member

1 of the staff of the Commission designated by the
2 Commission for such purpose.

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

9 **SEC. 204. COMMISSION PERSONNEL MATTERS.**

10 (a) COMPENSATION OF MEMBERS.—Members of the
11 Commission shall serve without compensation for their
12 services to the Commission.

13 (b) TRAVEL EXPENSES.—The members of the Com-
14 mission shall be allowed travel expenses, including per
15 diem in lieu of subsistence, at rates authorized for employ-
16 ees of agencies under subchapter I of chapter 57 of title
17 5, United States Code, while away from their homes or
18 regular places of business in the performance of services
19 for the Commission.

20 (c) STAFF.—

21 (1) IN GENERAL.—The Chairperson of the
22 Commission may, without regard to the civil service
23 laws and regulations, appoint and terminate an execu-
24 tive director and such other additional personnel as
25 may be necessary to enable the Commission to per-

1 form its duties. The employment of an executive di-
2 rector shall be subject to confirmation by the Com-
3 mission.

4 (2) COMPENSATION.—The Chairperson of the
5 Commission may fix the compensation of the execu-
6 tive director and other personnel without regard to
7 the provisions of chapter 51 and subchapter III of
8 chapter 53 of title 5, United States Code, relating
9 to classification of positions and General Schedule
10 pay rates, except that the rate of pay for the execu-
11 tive director and other personnel may not exceed the
12 rate payable for level V of the Executive Schedule
13 under section 5316 of such title.

14 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any
15 Federal Government employee may be detailed to the
16 Commission without reimbursement, and such detail shall
17 be without interruption or loss of civil service status or
18 privilege.

19 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-
20 TENT SERVICES.—The Chairperson of the Commission
21 may procure temporary and intermittent services under
22 section 3109(b) of title 5, United States Code, at rates
23 for individuals which do not exceed the daily equivalent
24 of the annual rate of basic pay prescribed for level V of
25 the Executive Schedule under section 5316 of such title.

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

2 The Commission shall terminate 90 days after the
3 date on which the Commission submits its report under
4 section 202.

5 **SEC. 206. FUNDING.**

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

9 (b) AVAILABILITY.—Sums appropriated to the De-
10 partment of Justice shall be made available to carry out
11 this title.

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