

1 AN ACT relating to the death penalty.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. Notwithstanding any provision of law to the contrary, death penalty
4 executions shall be suspended as of the effective date of this Act until December 3, 2018,
5 or until the Task Force on the Death Penalty, established in Section 2 of this Act, submits
6 a final report to the Legislative Research Commission, whichever is earlier.

7 ➔Section 2. The Legislative Research Commission is directed to establish the
8 Task Force on the Death Penalty to study issues and develop recommendations regarding
9 the Commonwealth of Kentucky's continued use of the death penalty, including:

- 10 (1) Whether there is a significant difference between the cost of the death penalty
11 from indictment to execution and the cost of life in prison without parole; in
12 considering the overall cost of the death penalty in the Commonwealth, the
13 cost of all the capital trials that result in life sentences as well as death
14 sentences that are reversed on appeal must be factored into the equation;
- 15 (2) Whether the selection of defendants for capital trials in the Commonwealth is
16 arbitrary, unfair, or discriminatory in any way and whether there is unfair,
17 arbitrary, or discriminatory variability at any stage in the process, including in
18 the sentencing phase;
- 19 (3) Whether there is a significant difference in the crimes of those selected for the
20 punishment of death as opposed to those who receive life in prison, and
21 whether there is an adequate process for determining when death sentences are
22 excessive when compared with sentences for other than death;
- 23 (4) The impact of the death penalty on the families of murder victims, the
24 availability and cost of services currently being provided in the
25 Commonwealth for the families of murder victims, and whether these services
26 are sufficient to meet the needs of surviving families;
- 27 (5) Whether, in light of the Supreme Court ruling in *Atkins v. Virginia*, there are

- 1 adequate procedural protections in place to ensure that people with mental
2 retardation are not in fact being sentenced to death and executed;
- 3 (6) Whether persons suffering from mental illness constitute a disproportionate
4 number of those on death row, what criteria should be used in judging the
5 level of mental illness involved, and whether people with mental illness who
6 are convicted of murder should be executed;
- 7 (7) Whether the process of selecting capital trial jurors who can consider all
8 sentencing options, known as death qualification, impacts the reliability and
9 fairness of capital trials; whether there are adequate procedural protections
10 and remedies in place to make sure that women, African Americans, and
11 people of faith are not excluded from serving as jurors in capital cases; and
12 whether there are adequate procedural protections in place to ensure that
13 jurors are able to understand and apply instructions in determining guilt or
14 innocence and the appropriate punishment in a capital case;
- 15 (8) Whether there are adequate procedures in place to ensure that serious error in
16 capital cases is identified and corrected, and to what extent legal doctrines,
17 such as waiver or forfeiture, operate to prevent judicial review of serious
18 constitutional claims on the merits;
- 19 (9) Whether the current clemency process adequately functions as a safety net to
20 ensure that factual and procedural errors that directly undermine the reliability
21 and fairness of a capital sentence are remedied;
- 22 (10) Whether the death penalty rationally serves a legitimate retributive intent,
23 such as public safety or deterrence;
- 24 (11) Whether there are adequate procedural protections in place to prevent an
25 innocent person from being sentenced to death and executed;
- 26 (12) The quality of counsel provided to indigent capital defendants, and whether
27 such counsel and the process for providing counsel ensures the reliability and

1 fairness of capital trials;

2 (13) The traumatic impact of the death penalty process on law enforcement,
3 prosecutors, defense counsel, judges, jurors, correctional officers, and the
4 family members of victims and defendants;

5 (14) Whether the length and conditions of confinement on death row comply with
6 the requirements of the United States Constitution, the Constitution of the
7 Commonwealth of Kentucky, and standards of international law, and the
8 impact of those conditions on correctional officers; and

9 (15) Whether it is still feasible to use lethal injection as a means of execution given
10 the limited supply of chemicals available.

11 ➔Section 3. The task force shall be composed of the following members, with
12 final membership of the task force being subject to the consideration and approval of the
13 Legislative Research Commission:

14 (1) The chair of the Senate Judiciary Committee, who shall be co-chair of the task
15 force; however, if he or she declines to serve, the President of the Senate shall
16 designate a member of the Senate to serve as co-chair of the task force;

17 (2) The chair of the House of Representatives Judiciary Committee, who shall be
18 co-chair of the task force; however, if he or she declines to serve, the Speaker
19 of the House of Representatives shall designate a member of the House of
20 Representatives to serve as co-chair of the task force;

21 (3) A former senior administrative officer from the Administrative Office of the
22 Courts, to be recommended by the director of the Administrative Office of the
23 Courts;

24 (4) A retired Circuit Court judge, recommended by the Chief Justice of the
25 Kentucky Supreme Court;

26 (5) A former Commonwealth's attorney or assistant Commonwealth's attorney,
27 recommended by the Kentucky Attorney General;

- 1 (6) A former public defender from the Capital Trials branch, recommended by the
2 Public Advocate;
- 3 (7) A former commissioner or deputy commissioner within the Kentucky Justice
4 and Public Safety Cabinet, recommended by the secretary of the Cabinet;
- 5 (8) A warden or deputy warden formerly employed by the Kentucky Department
6 of Corrections at the Kentucky State Penitentiary, recommended by the
7 commissioner of the Department of Corrections;
- 8 (9) Two retired criminal defense attorneys who are not currently serving as
9 legislators, recommended by the president of the Kentucky Association of
10 Criminal Defense Lawyers; and
- 11 (10) An attorney formerly employed by the Office of Victims Advocacy within the
12 Office of the Kentucky Attorney General, recommended by the Kentucky
13 Attorney General.

14 ➔Section 4. The final product of the task force shall be a report containing
15 recommendations, which shall be voted on by members of the task force. The task force
16 shall meet during the 2017 and 2018 interims of the General Assembly and shall submit
17 the final report to the Legislative Research Commission for referral to the appropriate
18 interim joint committee or committees by December 3, 2018.

19 ➔Section 5. Provisions of Sections 2 and 3 of this Act to the contrary
20 notwithstanding, the Legislative Research Commission shall have the authority to
21 alternatively assign the issues identified herein to an interim joint committee or
22 subcommittee thereof and to designate a study completion date.

23 ➔Section 6. Sections 2 to 5 of this Act shall have the same legal status as a Senate
24 Concurrent Resolution.