

Department of Legislative Services
 Maryland General Assembly
 2003 Session

FISCAL AND POLICY NOTE

Senate Bill 544
 Judicial Proceedings

(Senator Grosfeld, *et al.*)

Criminal Law - Death Penalty - Repeal

This bill repeals the death penalty and all provisions relating to the death penalty, including provisions relating to administration of the death penalty and provisions relating to proceedings after death sentences have been imposed. A person found guilty of murder in the first degree must be sentenced to imprisonment for life or imprisonment for life without the possibility of parole.

The bill also provides that an inmate who has been sentenced to death before the bill's October 2003 effective date, and who has not been executed, may not be executed and will be considered as having received a sentence of life imprisonment without the possibility of parole. If the State has already properly filed a notice of intent to seek a death sentence, that notice must be considered withdrawn. In such an instance, the State must also be considered to have properly filed notice to seek a sentence of life imprisonment without the possibility of parole.

Fiscal Summary

State Effect: Decrease in general fund expenditures for the Office of the Public Defender of about \$1.3 million annually. Otherwise, abolition of the death penalty is not expected to have a significant effect on overall State operations or finances.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	(1,300,000)	(1,300,000)	(1,300,000)	(1,300,000)	(1,300,000)
Net Effect	\$1,300,000	\$1,300,000	\$1,300,000	\$1,300,000	\$1,300,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal. While some State's Attorneys' offices prosecute more death penalty cases than others, and the cost of bringing capital cases tends to be significantly higher than noncapital cases, this bill is not expected to result in a significant impact to staffing levels or operational expenses of any one office.

Small Business Effect: None.

Analysis

Bill Summary: The bill repeals the death penalty and all its relevant provisions. The bill repeals the provisions that require the State's Attorney to:

- provide written notice to the defendant of the State's Attorney's intent to seek a death sentence; and
- file a copy of the notice or withdrawal with the Clerk of the Court of Appeals if the State's Attorney's files or withdraws a notice of intent to seek a death sentence.

The bill repeals:

- procedures for death sentencing proceedings required after the trial has been completed;
- provisions regarding the types of evidence that are admissible in sentencing proceedings to determine whether the person shall be sentenced to death;
- provisions requiring the Court of Appeals to review the record whenever the death penalty is imposed;
- the procedures for post-conviction review and review of the death sentence by a judicial panel;
- the provision that requires the court, before whom a defendant is tried and convicted, to sentence the defendant to death by lethal injection;
- the provision that prohibits a person from being disqualified, excused, or excluded from jury service by reason of the person's beliefs against capital punishment unless the belief would prevent the person from returning an impartial verdict; and

- those provisions relating to the implementation of the death penalty by the Department of Public Safety and Correctional Services (DPSCS).

The bill also provides that an inmate who has been sentenced to death before the effective date of the bill and who has not been executed, may not be executed and is considered to have received a sentence of life imprisonment without the possibility of parole. In any case in which the State has properly filed a notice of intent to seek the death penalty and the sentence has not been imposed, the bill provides that the notice of intent is withdrawn and it shall be considered that the State properly filed a notice of intent to seek life imprisonment without the possibility of parole.

The bill also makes technical and conforming changes that result from repealing the death penalty.

Current Law: Maryland is a common law state, and has had a death penalty since it became a sovereign state. Persons charged with first degree murder, if found guilty, are subject to penalties of life imprisonment, life imprisonment without parole, or death. Decisions to seek the death penalty are made by local State's Attorneys. The State is required to provide a person charged with first degree murder with written notice of an intention to seek the death penalty at least 30 days prior to trial.

A separate sentencing proceeding is required to be conducted as soon as practicable after completion of a trial to determine whether the death penalty will be imposed. A court or jury, in considering the imposition of the death penalty, must first consider whether any of ten aggravating circumstances exist beyond a reasonable doubt. If the presence of one or more aggravating factors is found, the court or jury must consider whether one or more of eight mitigating factors exists and whether the aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. If a court or jury finds for the existence of aggravating factors and that they outweigh the mitigating factors, or no mitigating factors are found, a death sentence may be imposed. The Court of Appeals is required to review the death sentence on the record. Implementation of the death penalty must be carried out by the Division of Correction (DOC) in DPSCS.

Background: Political and social arguments for and against the use of capital punishment have persisted over many years both nationally and in Maryland. Although questions about the use of the death penalty previously focused on the morality of state-sanctioned killing, more attention is now being paid to the ability of government to administer the system fairly – without racial, geographic, or socioeconomic inequities – and in a way that minimizes the risk of executing innocent persons.

There are currently 38 states with the death penalty. The following 12 states and the District of Columbia do not currently have a death penalty statute: Alaska, Hawaii, Iowa,

Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin. No state has repealed its death penalty in recent history, although there has been some consideration of adding a death penalty in states that do not currently have the penalty. In January 2003, before leaving office, Illinois Governor George Ryan commuted the sentences of 167 inmates to life imprisonment due to grave concerns about the equity of the death penalty in Illinois. Illinois has had a death penalty moratorium for three years and completed a comprehensive review of its death penalty system. The moratorium continues under the new Illinois governor. Illinois and Maryland are the only two states that have officially instituted death penalty moratoriums. The Maryland moratorium was implemented through executive action and effectively ended when new Governor Robert Ehrlich took office in January 2003.

In Maryland, since the death penalty was reinstated on July 1, 1978, there have been 52 persons sentenced to death (representing the imposition of 78 death sentences). To date, three persons have been executed, all in the 1990s. There are currently 12 persons under sentence of death. The State completed an execution warrant for one inmate, Steven Oken, who was scheduled to be executed the week of March 17. However, Oken received a stay of execution from the Court of Appeals based on his challenges to the sentencing procedures under Maryland's death penalty statute. The Court of Appeals has tentatively scheduled a hearing for May 2003. Three other inmates have just about exhausted all challenges and could be scheduled for execution this spring or summer. Three additional inmates could be scheduled for execution before the end of 2003.

In 2000, Governor Glendening authorized \$225,000 for a study of racial disparity and fairness issues by the Criminology Department at the University of Maryland, College Park. The study was released in January 2003 and included data collection from a wide variety of sources searching for and identifying certain case characteristics for all capital cases tried in the State since the reintroduction of capital punishment in 1978 until December 1999. The University of Maryland study found that the race of the offender did not have a significant impact in the death penalty process. However, the jurisdiction where the murder was prosecuted and the race of the victim did affect application of the death penalty. Generally, the early decisions made by prosecutors, specifically whether a case is eligible for the death penalty and the decision to retain or drop pursuit of a death sentence, were major factors in determining who faced execution. Similar studies of the equity of death penalty implementation have been conducted in Nebraska, Illinois, Indiana, North Carolina, and Virginia. Virginia's study of its death penalty system was released in January 2003. That study found there was no untoward disparity based on race or any other factor that impaired administration of its death penalty.

State Fiscal Effect: Prosecutions, defenses, and appellate proceedings attributable to capital cases are far more costly than litigation for other criminal cases. There are also measurable costs associated with maintaining a "death row" within the State correctional system, and with actual executions. The State entities that would be directly affected by

abolition of the death penalty include the Judiciary, the Office of the Attorney General, the Office of the Public Defender, and DPSCS.

Judiciary and the Office of the Attorney General: The Judiciary would experience a reduction in appeals, but would not experience a significant fiscal or operational impact as a result. Such a resulting decrease in appeals would also impact the Office of the Attorney General, but any related existing litigation resources would be reallocated without any appreciable impact on overall operations or finances.

The Office of the Public Defender: The Office of the Public Defender (OPD) would be able to eliminate its “Capital Defense Division,” although the personnel from that unit would be reassigned within the agency. A savings of about \$1.3 million would accrue from elimination of the Capital Defense Division. The fiscal 2004 allowance for the Capital Defense Division is \$906,918. Additional savings would occur from the release and/or elimination of panel attorneys, expert witnesses, transcripts, and investigations, which normally occur with capital cases. OPD advises that historically, the annual cost of litigating capital cases has been about \$1.9 million. If those same cases were tried as noncapital cases, the cost to the office would be about \$650,000, resulting in savings of about \$1.3 million.

OPD advises that if the death penalty is abolished, the division would continue working on pending cases, but would otherwise begin to close its operations. It is noted that this unit is generally administrative in nature and rarely litigates death penalty cases. That function is performed via staff attorneys in the field offices and/or panel attorneys. It should be noted, however, that subjecting defendants to life imprisonment or life imprisonment without parole for the same offenses, instead of a death sentence, would still require substantial resources.

DPSCS: For DOC, any savings realized by the elimination of “Max Level II” (death row) at the Maryland Correctional Adjustment Center (MCAC) and the potential elimination of costs associated with executions would be generally offset by the expense of longer stays in DOC facilities.

DOC advises that the annual cost of maintaining a death penalty inmate is about \$50,000, compared to \$26,000 for a maximum security inmate. There are 12 inmates on death row currently. The length of time on death row varies; however, three of the current death row inmates have been there for 19 years. There is no way to precisely determine if and when any of the 12 death sentences might be carried out due to the lengthy appeals process. By way of illustration, the three death row inmates executed by Maryland in the 1990s had stays of 12, 10, and 4 years, respectively, averaging to about 8 years.

There would be an initial savings of about \$192,000 if inmates no longer had to be maintained at MCAC, but instead were maintained at a maximum security facility; however, those savings would be affected by the following factors:

- There are significant costs with executions, including salaries, staff overtime, and the preparation for the execution process. While there is a great deal of activity involved with an execution, they occur so rarely that general operating procedures are not impaired; and
- The inmate who is not executed, but instead sentenced to life would most likely remain incarcerated beyond the average eight-year stay of a death row inmate. There is no reliable way to predict how long such an inmate would be housed. The savings that could be realized from the lower cost of housing a maximum security inmate would dissipate because that inmate could remain at DOC for many years.

If this bill was enacted, DOC would place the death penalty inmates in a maximum security facility and convert death row to regular housing at MCAC.

Accordingly, this bill is expected to have a negligible effect on the budgetary needs or operations of DOC.

Additional Information

Prior Introductions: A similar bill, HB 102, was introduced in the 2001 session. HB 102 was referred to the Judiciary Committee, where it received an unfavorable report.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, University of Maryland, Death Penalty Information Center, *The Washington Post*, *The Baltimore Sun*, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2003
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