

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 994
Judiciary

(Delegate Conway, *et al.*)

Criminal Law - Death Penalty - Scientific Evidence

This bill extends eligibility for the death penalty to cases in which the State presents the court or jury with scientific evidence that links a defendant convicted of first degree murder to the murder. The bill does not define “scientific evidence.”

Fiscal Summary

State Effect: Any increase in death penalty cases as a result of the bill can be handled with existing resources.

Local Effect: Any increase in death penalty cases as a result of the bill can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: Persons charged with first degree murder, if found guilty, are subject to penalties of life imprisonment, life imprisonment without parole, or death. Pursuant to Chapter 186 of 2009, the death penalty may only be imposed in cases in which the State presents the court or jury with (1) biological or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. A defendant is prohibited from being sentenced to death if the State relies solely on evidence provided by eyewitnesses in its case.

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 defendant who was younger than age 18 at the time of the murder may not be sentenced to death. A defendant who can prove by a preponderance of the evidence that he/she was mentally retarded¹ at the time of the murder is also exempt from the death penalty.

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 10 aggravating circumstances exist beyond a reasonable doubt. If the presence of one or more aggravating circumstances is found, the court or jury must consider whether one or more of eight mitigating circumstances exists and whether the aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. If a court or jury finds the existence of aggravating circumstance and that they outweigh the mitigating circumstance, or no mitigating circumstance is 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 the Department of Public Safety and Correctional Services (DPSCS).

State Expenditures: DPSCS advises that the bill will not have a fiscal impact on the department. The limitations on death penalty eligible cases contained in Chapter 186 of 2009 did not go into effect until October 1, 2009. DPSCS has not experienced a material change in resources since that date that would result in the bill's changes having a significant fiscal or operational impact on DPSCS.

OPD advises that the bill will have a significant impact on OPD workloads so that if the bill resulted in five additional death penalty cases, the office would need to hire five additional attorneys at a cost of \$374,000 in fiscal 2011. Legislative Services disagrees with this estimate. In July 2009, OPD moved its Capital Defense Division under District Operations but did not experience a reduction in legal staff as a result of the 2009 legislation. Prior to the 2009 legislation, there were no statutory evidentiary restrictions on death penalty cases. While an increase in death penalty cases as a result of this bill may increase OPD operational costs, any increase would be minimal and OPD has resources to handle cases at the pre-October 2009 level.

¹ The term "mentally retarded" is being used in this fiscal and policy note because that term has a specific legal meaning as developed by case law. Chapter 119 of 2009 replaced the term "mental retardation" with "intellectual disability" in the State code. However, the Act did not alter references to "mental retardation" in the Criminal Law Article.

Local Expenditures: Local expenditures for State's Attorneys are not likely to be affected as a result of the bill. Only one prosecutor in the State has pursued capital charges since the 2009 legislation went into effect in October 2009.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, baltimoresun.com, Department of Legislative Services

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