

# HOUSE BILL 794

E2

CONSTITUTIONAL AMENDMENT

9lr1964

---

By: **Delegates Impallaria, Boteler, and McDonough**

Introduced and read first time: February 11, 2009

Assigned to: Judiciary

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Death Penalty Court**

3 FOR the purpose of authorizing the General Assembly to create a Death Penalty Court  
4 that shall have original and exclusive jurisdiction over all presentments or  
5 indictments for offenses punishable by death; vesting the judicial power of the  
6 State in the Death Penalty Court as the General Assembly may create by law;  
7 providing that the judges of the Death Penalty Court that may be created may  
8 not be elected in a certain manner; requiring certain presentments or  
9 indictments to be transmitted to the Death Penalty Court that may be created;  
10 requiring the Attorney General to prosecute certain presentments or  
11 indictments pending in the Death Penalty Court that may be created; and  
12 submitting this amendment to the qualified voters of the State of Maryland for  
13 their adoption or rejection.

14 BY proposing an amendment to the Maryland Constitution  
15 Article IV – Judiciary Department  
16 Section 1, 3, and 8(b)

17 BY proposing an addition to the Maryland Constitution  
18 Article IV – Judiciary Department  
19 Section 27 to be under the new part “Part IV – Death Penalty Court”

20 BY proposing an amendment to the Maryland Constitution  
21 Article V – Attorney–General and State’s Attorneys  
22 Section 3(a)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
24 MARYLAND, (Three–fifths of all the members elected to each of the two Houses  
25 concurring), That it be proposed that the Maryland Constitution read as follows:

26 **Article IV – Judiciary Department**

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 1.

2 The Judicial power of this State is vested in a Court of Appeals, such  
3 intermediate courts of appeal as the General Assembly may create by law, **A DEATH**  
4 **PENALTY COURT AS THE GENERAL ASSEMBLY MAY CREATE BY LAW**, Circuit  
5 Courts, Orphans' Courts, and a District Court. These Courts shall be Courts of Record,  
6 and each shall have a seal to be used in the authentication of all process issuing from  
7 it.

8 3.

9 Except for the Judges of the District Court **AND THE DEATH PENALTY**  
10 **COURT**, the Judges of the several Courts other than the Court of Appeals or any  
11 intermediate courts of appeal shall, subject to the provisions of Section 5 of this Article  
12 of the Constitution, be elected in Baltimore City and in each county, by the qualified  
13 voters of the city and of each county, respectively, all of the said Judges to be elected  
14 at the general election to be held on the Tuesday after the first Monday in November,  
15 as now provided for in the Constitution. Each of the said Judges shall hold his office  
16 for the term of fifteen years from the time of his election, and until his successor is  
17 elected and qualified, or until he shall have attained the age of seventy years,  
18 whichever may first happen, and be reeligible thereto until he shall have attained the  
19 age of seventy years, and not after. In case of the inability of any of said Judges to  
20 discharge his duties with efficiency, by reason of continued sickness, or of physical or  
21 mental infirmity, it shall be in the power of the General Assembly, two-thirds of the  
22 members of each House concurring, with the approval of the Governor to retire said  
23 Judge from office.

24 8.

25 (b) In all cases of presentments or indictments for offenses that are  
26 punishable by death, on suggestion in writing under oath of either of the parties to the  
27 proceedings that the party cannot have a fair and impartial trial in the court in which  
28 the proceedings may be pending, the court shall order and direct the record of  
29 proceedings in the presentment or indictment to be transmitted to some other court  
30 having jurisdiction in such case for trial; **OR IF A DEATH PENALTY COURT HAS**  
31 **BEEN CREATED BY THE GENERAL ASSEMBLY, ANY SUCH CASE SHALL BE**  
32 **IMMEDIATELY TRANSMITTED TO THE DEATH PENALTY COURT.**

#### 33 **PART IV – DEATH PENALTY COURT**

34 **27.**

35 (A) **THE GENERAL ASSEMBLY MAY CREATE BY LAW A STATEWIDE TRIAL**  
36 **COURT WITH ORIGINAL AND EXCLUSIVE JURISDICTION OVER PRESENTMENTS**

1 **OR INDICTMENTS FOR OFFENSES THAT ARE PUNISHABLE BY DEATH ARISING IN**  
2 **THE STATE.**

3 **(B) THE DEATH PENALTY COURT SHALL HAVE JURISDICTION THAT IS**  
4 **UNIFORM THROUGHOUT THE STATE.**

5 **Article V – Attorney–General and State’s Attorneys**

6 3.

7 (a) The Attorney General shall:

8 (1) Prosecute and defend on the part of the State all cases pending in  
9 the appellate courts of the State, in the Supreme Court of the United States or the  
10 inferior Federal Courts, by or against the State, or in which the State may be  
11 interested, except those criminal appeals otherwise prescribed by the General  
12 Assembly.

13 (2) Investigate, commence, and prosecute or defend any civil or  
14 criminal suit or action or category of such suits or actions in any of the Federal Courts  
15 or in any Court of this State, or before administrative agencies and quasi legislative  
16 bodies, on the part of the State or in which the State may be interested, which the  
17 General Assembly by law or joint resolution, or the Governor, shall have directed or  
18 shall direct to be investigated, commenced and prosecuted or defended.

19 (3) When required by the General Assembly by law or joint resolution,  
20 or by the Governor, aid any State’s Attorney or other authorized prosecuting officer in  
21 investigating, commencing, and prosecuting any criminal suit or action or category of  
22 such suits or actions brought by the State in any Court of this State.

23 (4) Give his opinion in writing whenever required by the General  
24 Assembly or either branch thereof, the Governor, the Comptroller, the Treasurer or  
25 any State’s Attorney on any legal matter or subject.

26 **(5) PROSECUTE ON THE PART OF THE STATE ALL PRESENTMENTS**  
27 **OR INDICTMENTS FOR OFFENSES PUNISHABLE BY DEATH THAT ARE PENDING IN**  
28 **THE DEATH PENALTY COURT AS THE GENERAL ASSEMBLY MAY CREATE BY**  
29 **LAW.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly  
31 determines that the amendment to the Maryland Constitution proposed by this Act  
32 affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the  
33 Maryland Constitution concerning local approval of constitutional amendments do not  
34 apply.

35 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section  
36 proposed as an amendment to the Maryland Constitution shall be submitted to the

1 legal and qualified voters of this State at the next general election to be held in  
2 November, 2010 for their adoption or rejection pursuant to Article XIV of the  
3 Maryland Constitution. At that general election, the vote on this proposed amendment  
4 to the Constitution shall be by ballot, and upon each ballot there shall be printed the  
5 words "For the Constitutional Amendment" and "Against the Constitutional  
6 Amendment," as now provided by law. Immediately after the election, all returns shall  
7 be made to the Governor of the vote for and against the proposed amendment, as  
8 directed by Article XIV of the Maryland Constitution, and further proceedings had in  
9 accordance with Article XIV.