

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 794
Judiciary

(Delegate Impallaria, *et al.*)

Courts - Death Penalty Court

This constitutional amendment authorizes the General Assembly to create a Death Penalty Court, which would be a trial court with original and exclusive uniform statewide jurisdiction over offenses punishable by death. The Attorney General is required to prosecute all cases in the Death Penalty Court. Judges on the Death Penalty Court are not elected in the same manner as circuit court judges.

Fiscal Summary

State Effect: Adoption of the constitutional amendment does not directly affect State finances or operations.

Local Effect: If approved by the General Assembly, this constitutional amendment will be submitted to the voters at the 2010 general election. It is not expected to result in additional costs for local boards of elections.

Small Business Effect: None.

Analysis

Current Law: Death penalty cases are tried in circuit courts with State's Attorneys serving as prosecutors. 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 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 retarded at the time of the murder is also exempt from the death penalty.

The Maryland Constitution requires the Attorney General to prosecute and defend all cases by or against the State pending in the State's appellate courts, in the U.S. Supreme Court, or the federal courts. This requirement also applies to cases that are not by or against the State, but are ones in which the State may be interested, except for criminal appeals otherwise prescribed by the General Assembly. The Maryland Constitution also requires the Attorney General to aid State's Attorneys in certain instances, or investigate, commence, prosecute, or defend certain legal actions at the direction of the General Assembly or the Governor.

Circuit court judges are nominated by principal political parties or during a primary election and are elected to office in a general election. Candidates may appear by petition on the general election ballot. Article IV of the Maryland Constitution specifies that vacancies in the office of a circuit court judge be filled by gubernatorial appointment until the election and qualification of a successor at the first general election one year after the occurrence of the vacancy.

Background: Based on information provided by the National Center for State Courts, there are no statewide trial courts that exclusively handle death penalty cases in the nation. Chapters 430 and 431 of 2008 established the Maryland Commission on Capital Punishment to study all aspects of capital punishment as currently and historically administered in the State. Among other things, the commission found that racial and geographic disparities exist in how the death penalty is applied.

Local Fiscal Effect: The Maryland Constitution requires that proposed amendments to the constitution be publicized either: (1) in at least two newspapers in each county, if available, and in at least three newspapers in Baltimore City once a week for four weeks immediately preceding the general election; or (2) by order of the Governor in a manner provided by law. State law requires local boards of elections to publicize proposed amendments to the constitution either in newspapers or on specimen ballots; local boards of elections are responsible for the costs associated with these requirements. It is anticipated that the budgets of local boards of elections will contain funding for notifying qualified voters about proposed constitutional amendments for the 2010 general election in newspapers or on specimen ballots.

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), Department of Legislative Services

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mcp/kdm

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