

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 441
Judiciary

(Delegate Impallaria, *et al.*)

Courts - Death Penalty Court

This proposed constitutional amendment authorizes the General Assembly to create by law 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: None. It is assumed that the potential for increased costs to include any proposed constitutional amendments on the ballot at the next general election will have been anticipated in the State Board of Elections' budget. Adoption of the constitutional amendment does not directly affect State finances; the General Assembly would need to pass additional legislation to actually create a Death Penalty Court.

Local Effect: None. It is assumed that the potential for increased costs to notify voters of any proposed constitutional amendments and to include any proposed constitutional amendments on the ballot at the next general election will have been anticipated in local boards of elections' budgets.

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 (intellectually disabled) 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: Chapters 430 and 431 of 2008 (SB 614/HB 1111) 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.

State Fiscal Effect: State costs of printing absentee and provisional ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). Any increase in costs, however, is expected to be relatively minimal, and it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001 (HB 1457), the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Fiscal Effect: Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment

on absentee and provisional ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

Additional Information

Prior Introductions: HB 794 of 2009 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Governor's Office, Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2013
mm/kdm

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