



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

BILL: HB0087 Criminal Law - Death Penalty

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/9/2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 87.

The General Assembly abolished the death penalty in 2013 in response to the ethical, legal, and practical concerns of the State killing its residents. This testimony will not rehash those arguments, but will instead focus on the financial cost required to reinstitute the death penalty.

Capital cases are the most intensive litigation for all system players because of the immensely high stakes. Despite the time and expense, the legal system still often gets it wrong. It is unknown how many people were wrongly executed, but [according to the Death Penalty Information Center](#), since 1973, at least 196 people nationwide, have been exonerated after being wrongly convicted and sentenced to death in the U.S. This includes two people in Maryland.

In 2008, the Urban Institute Justice Policy Center with support from the Abell Foundation issued a report, [The Cost of the Death Penalty in Maryland](#), which found that a death notice in a capital-eligible case adds \$670,000 in system-wide costs, and a death sentence adds an additional \$1.2 million in processing costs – totaling approximately \$1.9 million over and above the cost of a similar case where the death penalty was not sought. Factoring for inflation over the past fifteen years, the estimated increased total cost per case in 2024 would be \$2.69 million. Focusing specifically on defense services, the Urban Institute study noted that the prosecution of capital cases required OPD to operate the Capital Defense Division, with costs more than \$7 million (the equivalent of approximately \$10 million in 2024) for activities beyond the line staff representation included elsewhere in the study.

In 2023, OPD represented 762 people charged with first degree murder as a principal. Our data does not include information about the aggravating factors to determine the subset of capital-eligible cases; nor do we know the percentage of eligible cases for which the State’s Attorney would file a death notice. The 2008 Urban Institute study cites 162 prosecutions between 1978 and 1999 that received a death notice –an average of 7.4 cases per year.

If we assume there would be 7 capital cases requiring public defender services each year arising from this legislation, a conservative estimate of the staffing needed to provide defense representation is 5 senior felony attorneys for trial representation along with one social worker, secretary, and paralegal. This estimate is based on the 2005 Maryland workload standards for capital cases, which estimated that each capital case would require 1,464 hours of attorney time for representation up to and through trial, and applying a full-time workload of 2,080 hours. The 2005 standards are extremely outdated – unable to account for forensic and technological advances such as body-worn cameras and modern DNA testing. However, the more recent [National Public Defense Workload Study](#) did not include capital cases in its analysis, noting that these cases require substantially more resources and are treated differently from other cases.

For cases in which the prosecution is able to secure a death sentence, the costs do not end at trial. At the post-conviction and appellate proceedings, additional staffing would be needed. While relatively few cases will result in an actual death sentence, these proceedings are among the most complex and time-sensitive.

Finally, as discussed in the Urban Institute report, the Capital Defenders Division would need to be reinstated. This Division coordinated the delivery of legal defense services, arranged for experts, advised counsel in capital cases, and advocated with the State against the filing of a death notice pretrial. It would be impossible to meet our constitutional and professional obligations without having this additional expertise and support for any litigation that could result in the death of our client.

The reasons against resuming the death penalty neither start nor end with cost measures. However, even just an examination on the fiscal impact for the State of Maryland, particularly at this time of limited resources, is substantial. The defense alone would require at least 13 additional staff members and expert costs, totaling more than \$1 million for just the first year. The State costs

extend beyond defense representation as State's Attorneys Offices, the Judiciary, and Public Safety will also require additional resources.

The potential to sentence someone to death is the most extreme type of litigation imaginable. Because of that, the tremendous costs are unavoidable. These costs are not merely fiscal, but are felt throughout the legal system and by society as a whole.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 87.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

Authored by: Melissa Rothstein, Chief of External Affairs,

melissa.rothstein@maryland.gov, 410-767-9853 .