

Department of Legislative Services

Maryland General Assembly

2001 Session

FISCAL NOTE

House Bill 102

(Delegates Dembrow and Montague)

Judiciary

Crimes - Death Penalty - Abolition

This bill repeals the death penalty and all provisions relating to the death penalty. A person found guilty of murder in the first degree must be sentenced to imprisonment for life or imprisonment for life without the possibility of parole.

The bill also provides that an inmate who has been sentenced to death before October 1, 2001, who has not been executed, may not be executed and will be considered as having received a sentence of life imprisonment without the possibility of parole. If the State has already properly filed a notice of intent to seek a death sentence, that notice must be considered withdrawn. In such an instance, the State must also be considered to have properly filed notice to seek a sentence of life imprisonment without the possibility of parole.

Fiscal Summary

State Effect: Decrease in general fund expenditures for the Office of the Public Defender of about \$112,000 annually. Otherwise, abolition of the death penalty is not expected to have a significant effect on overall State operations or finances.

Local Effect: Minimal. While some State's Attorneys offices prosecute more death penalty cases than others, and the cost of bringing capital cases tends to be significantly higher than noncapital cases, this bill is not expected to result in a significant impact to staffing levels or operational expenses of any one office.

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. 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 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, beyond a reasonable doubt, any of ten aggravating circumstances exist. Whenever the death penalty is imposed, and the judgment becomes final, the Court of Appeals is required to review the sentence on the record. Administration of the death penalty is required to be carried out by the Division of Correction (DOC).

Background: Political and social arguments for and against the use of capital punishment have persisted over many years both nationally and in Maryland. Although questions about the use of the death penalty previously focused on the morality of state-sanctioned killing, more attention is now being paid to the ability of government to administer the system fairly -- without racial, geographic, or socioeconomic inequities -- and in a way that minimizes the risk of executing innocent persons.

There are currently 38 states with the death penalty. The following 12 states and the District of Columbia do not currently have a death penalty statute: Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.

In Maryland, since the death penalty was reinstituted on July 1, 1978, there have been 52 persons sentenced to death (representing the imposition of 78 death sentences). To date, three persons have been executed, all in the 1990s. There are currently 13 persons under sentence of death, of whom all but one are held at the Maryland Correctional Adjustment Center (MCAC). One person is in federal custody. Four of these 13 inmates could be scheduled for execution in the near future since they are likely to exhaust collateral challenges to their convictions and/or sentences by early 2001.

The Governor has authorized the spending of \$225,000 on a study of racial disparity and fairness issues by the Criminology Department at the University of Maryland, College Park. The study is expected to take about two years (concluding by Fall of 2002) and will include data collection from a wide variety of sources searching for and identifying certain case characteristics for all capital cases tried in the State since the reintroduction

of capital punishment in 1978. Similar studies are being conducted in Nebraska, Illinois, and Indiana.

State Fiscal Effect: Prosecutions, defenses, and appellate proceedings attributable to capital cases are far more costly than litigation for other criminal cases. There are also measurable costs associated with maintaining a “death row” within the State correctional system, and with actual executions. The State entities that would be directly affected by abolition of the death penalty include the Judiciary, the Office of the Attorney General, the Office of the Public Defender, and the Department of Public Safety and Correctional Services.

The Judiciary would experience a reduction in appeals, but would not experience a significant fiscal or operational impact as a result. Such a resulting decrease in appeals would also impact the Office of the Attorney General, but any related existing litigation resources would be reallocated without any appreciable impact on overall operations or finances.

The Office of the Public Defender would be able to eliminate its “Capital Defense Unit,” although the personnel from that unit would be reassigned within the agency. An annual savings of about \$112,000 would accrue to the Public Defender due to no longer needing separate office space for the unit. It is noted that this unit is generally administrative in nature and rarely litigates death penalty cases. That function is performed via staff attorneys in the field offices and/or panel attorneys. Panel attorney fees, as well as litigation expenses (such as those associated with expert witnesses, transcripts, and investigations) would decrease. However, subjecting defendants to a life sentence or life without parole for the same offenses, instead of a death sentence, would still require substantial resources.

For the Division of Correction, any savings realized by the elimination of “Max Level II” at MCAC (death row) and the potential elimination of costs associated with executions would be generally offset by the expense of longer stays in DOC facilities. Accordingly, this bill is expected to have a negligible effect on the budgetary needs or operations of DOC. The average length of stay of a person on death row is about eight years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, Office of the Public Defender, Office of the State's Attorneys' Coordinator, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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