

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 972
Judiciary

(Delegate Montague, *et al.*)

Death Sentence - Aggravating and Mitigating Circumstances - Comparison

This bill provides that in the sentencing proceeding in a capital case if a court or jury finds that one or more specified mitigating circumstances exist, then the court or jury must determine, beyond a reasonable doubt, whether the aggravating circumstances outweigh the mitigating circumstances. The bill has retroactive application.

Fiscal Summary

State Effect: It is expected that the bill's requirements could be met with existing resources.

Local Effect: It is expected that the bill's requirements could be met with existing resources.

Small Business Effect: None.

Analysis

Current Law: In the sentencing proceeding in a death penalty case, if the court or jury finds that one or more specified mitigating factors exist, then the court or jury must determine, by a preponderance of the evidence, whether specified aggravating circumstances outweigh the mitigating circumstances.

If the court or jury finds that the aggravating circumstances outweigh the mitigating circumstances, a death sentence must be imposed. If the aggravating circumstances do not outweigh the mitigating circumstances, a death sentence may not be imposed.

If a jury makes the determination, the decision to impose the death sentence must be unanimous and signed by the jury foreperson. The court or jury must put its determination in writing and state specifically each aggravating circumstance and each mitigating circumstance. The court or jury must state whether any aggravating circumstances outweigh any mitigating circumstances, or, in the alternative, whether the aggravating circumstances do not outweigh the mitigating factors. The court or jury must state its conclusion about the sentence based upon the findings regarding aggravating or mitigating circumstances and the weight given to those circumstances.

Background: The Office of the Attorney General (OAG) advises that there are 13 people currently on Maryland's death row. Both the OAG and the Administrative Office of the Courts (AOC) anticipate that all 13 death row inmates would require new sentencing proceedings to consider the weight of aggravating and mitigating factors, as provided by this bill. The new sentencing proceeding would also generate new direct and collateral appeals, even if a new sentencing panel decides not to impose the death sentence. At this time, 9 of the 13 death penalty cases come from Baltimore County, so Baltimore County would have the highest number of new sentencing proceedings to initiate.

Four of the 13 death row inmates are fairly close to completion of all appeals and could conceivably be executed this year. In one case, a death warrant has been requested and the judge is considering whether to sign it. A hearing on the warrant is scheduled during March. If the warrant is signed, the inmate could be executed before the end of May. Another inmate was scheduled for execution during March 2002. However, the Maryland Court of Appeals stayed the execution pending an appeal to the U.S. Supreme Court. That appeal, based on the case *Apprendi v. New Jersey*, 530 U.S. 466 (2000), is expected to affect the disposition of the other two death row cases. In the *Apprendi* case, the Supreme Court held that any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt.

Since the *Apprendi* ruling, the Maryland Court of Appeals issued a ruling in the case *Borchardt v. Maryland* 786 A.2d 631 (2001). In *Borchardt*, the Court of Appeals specifically applied the *Apprendi* ruling to a first degree murder case in which a jury imposed the death penalty. In a 4 to 3 decision, the court found that as death is the maximum penalty for first degree murder, neither an aggravating factor, the absence of a mitigating factor, nor a jury determination that an aggravating factor outweighs a mitigating factor can, in any way, increase the prescribed statutory maximum penalty for first degree murder. Accordingly, Maryland's sentencing procedure in death penalty cases is consistent with the Supreme Court *Apprendi* ruling. In January 2002, the U.S.

Supreme Court granted certiorari in the case *Arizona v. Ring*, 25 P.3rd 1139 *cert. granted*, 2002 U.S. LEXIS 409 (January 11, 2002) to consider the application of *Apprendi* to a sentencing proceeding where the death sentence was imposed by a court. As a result of the possibility of new court rulings based on the *Apprendi* ruling, executions that were ready to be scheduled for this spring and summer could be delayed until late fall or beyond.

State/Local Fiscal Effect: The AOC, Office of Public Defender, State's Attorneys' Association, and the Division of Correction all advise that no significant fiscal impact is expected from this bill. While on death row, inmates press appeals through the State system and into the federal system. The OAG advises that it generally takes 5 to 15 years to exhaust all appeals related to a capital case. The new sentencing proceeding required by this bill could extend the amount of time a death row inmate would have to contest aspects of the death penalty imposition. However, because these inmates are generally involved in lengthy appeals in any event, the prospect of new proceedings or appeals is not expected to require additional resources. As a result, the Department of Legislative Services advises that the bill's requirements could be handled within existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Office of the Attorney General (Criminal Appeals Division), Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Legal Information Institute, Department of Legislative Services

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