

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 350 (Senator Green, *et al.*)
Judicial Proceedings

Criminal Law - Death Penalty - Proportionality Review

This bill requires the Court of Appeals, in its consideration of a death sentence, to determine whether the imposition of the death sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. In its decision, the Court of Appeals must include a reference to the similar cases that it considered.

Fiscal Summary

State Effect: Potential increase in general fund expenditures for the Judiciary to contract with consultants and for clerical assistance to comply with the bill's requirements.

Local Effect: The bill is not expected to have a significant impact on local operations or finances.

Small Business Effect: None.

Analysis

Current Law: After a death sentence is imposed and the judgment becomes final, the Court of Appeals must review the sentence on the record. An appeal from the verdict must be consolidated with the sentence review. The clerk of the trial court must send to the Clerk of the Court of Appeals:

- the entire record and transcript of the sentencing proceeding within ten days after receiving the transcript;

- the determination and written findings of the court or jury; and
- a report of the trial court in the form of the standard questionnaire from the Court of Appeals that includes a recommendation by the trial court as to whether the death sentence is justified.

The defendant and the State may submit briefs and present oral arguments to the Court of Appeals in the time the Court of Appeals allows. In addition to any error properly before the court on appeal, the court must also consider the imposition of the death sentence.

In considering the death sentence, the Court of Appeals must determine whether:

- the imposition of the death sentence was influenced by passion, prejudice, or any other arbitrary factor;
- the evidence supports the finding by the court or jury of a statutory aggravating circumstance; and
- the evidence supports a finding by the court or jury that the aggravating circumstances outweigh the mitigating circumstances.

In addition to its review under any direct appeal, the Court of Appeals must affirm the death sentence, or set the death sentence aside and remand the case for modification of the sentence to imprisonment for life.

The Court of Appeals is authorized to adopt rules of procedure for the expedited review of death sentences.

Background: In January 2003, the University of Maryland released a much anticipated study of the administration of the death penalty in Maryland. The study, entitled, *An Empirical Analysis of Maryland's Death Sentencing System With Respect to the Influence of Race and Legal Jurisdiction*, reviewed 6,000 first and second degree murder cases that were prosecuted between July 1978 and December 1999. The study concluded that, by itself, the offender's race did not play any clear role in the processing of death penalty cases at any of the stages. However, geography and the race of the victim did have an impact in the administration of death penalty cases. The study concluded that the probability of a death sentence in Baltimore County is 26 times higher than the probability of a death sentence in Baltimore City. An offender is 14 times more likely to receive a death sentence in Baltimore County than in Montgomery County and seven times more likely to receive a death sentence than a defendant in Prince George's County. The study found that black offenders who kill whites are twice as likely to get a death sentence as whites who kill whites. Black offenders who kill whites are four times more likely to get a death sentence than blacks who kill black victims.

In the study, the practice of the Baltimore County State's Attorney, who seeks the death penalty in nearly every death penalty eligible case, was contrasted with the practices of State's Attorneys in Baltimore City and Prince George's County, two jurisdictions with a large number of black homicide victims. In Baltimore City and Prince George's County, the State's Attorneys sought the death penalty on a far less frequent basis than the prosecutor in Baltimore County. In testimony before Maryland legislative committees, the study's author indicated that the causes for the reported disparities in Maryland's death penalty administration are not easily discernible. He suggested that a proportionality review of imposed death penalty sentences could shed some light on the factors that propel prosecutors to seek the death penalty in some death penalty cases, but not in all death penalty cases.

Governor Parris Glendening commissioned the latest study of Maryland's death penalty in September 2000. In May 2002, he imposed a moratorium on all executions in the State until the completion of the study. The moratorium remained in effect until the inauguration of Governor Robert Ehrlich. There are currently 12 inmates on death row in Maryland. Eight are black and four are white. Nine of the 12 come from Baltimore County. Governor Robert Ehrlich indicated that he does not plan to continue the death penalty moratorium. He has asked the Lieutenant Governor to review the University of Maryland study and present recommendations regarding its continued administration. Of the 12 death row inmates, a warrant of execution has been processed for Steven Oken. He is a white death row inmate who received the death penalty for the murder of three women, all of whom were white. The execution for Steven Oken was scheduled for the week of March 17, however, the Court of Appeals issued a stay of execution to hear challenges raised by Oken relating to sentencing proceedings for the death penalty in Maryland. The Court of Appeals has tentatively scheduled a hearing on these issues for May. Three other death row inmates have just about exhausted their appeals and could be scheduled for execution this spring or summer. Another three death row inmates could be scheduled for execution before the end of 2003.

State Expenditures: To comply with this bill, the Judiciary would need to contract with experts annually to determine whether an imposition of the death penalty is disproportionate, compared to other cases. This would require the appellate court to shift to an extensive fact-finding function and analyze evidence in cases not before it. Exact staffing and fiscal requirements would depend on the magnitude of review required at the time the Court of Appeals has a case before it that would require a proportionality review under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Commission on Criminal Sentencing Policy, Office of the Attorney General, University of Maryland, *The Baltimore Sun*, *The Washington Post*, Department of Legislative Services

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Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510