

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 16
Judiciary

(Delegate Marriott, *et al.*)

Death Penalty - Moratorium

This emergency bill prohibits the execution of any individual who has been sentenced to death and prohibits judges from issuing a warrant of execution. Any outstanding warrants of execution that have not been acted upon are void.

The General Assembly is required to review the report on death penalty administration issued by the University of Maryland Department of Criminology. Legislative recommendations must be made and legislation proposed to implement the recommendations if necessary. The progress of implementation of the recommendations and any legislation must be reviewed annually by the General Assembly. The bill expresses the intent of the General Assembly that, once any recommendations have been fully implemented, the death penalty moratorium shall be repealed.

Fiscal Summary

State Effect: No significant effect on State finances or operations. Costs for maintaining death sentence inmates at the Maryland Correctional Adjustment Center would continue. Costs for carrying out executions would be abated during the same period. Any potential effect on the Office of the Public Defender cannot be reliably predicted, but it is assumed that death penalty trials would continue.

Local Effect: No significant effect on local finances or operations. Any potential effect on the Offices of State's Attorneys during the moratorium cannot be reliably predicted, but it is assumed that death penalty trials would continue.

Small Business Effect: None.

Analysis

Current Law: A moratorium on the use of the death penalty was in effect through gubernatorial action in Maryland from May 2002 until January 2003. The moratorium effectively expired upon the inauguration of Governor Robert Ehrlich on January 15.

Maryland is a common law state, and has had a death penalty since it became a sovereign state. 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 any of ten aggravating circumstances exist beyond a reasonable doubt. If the presence of one or more aggravating factors is found, the court or jury must consider whether one or more of eight mitigating factors exists and whether the aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. If the aggravating factors are found and outweigh the mitigating factors, or no mitigating factors are found, a death sentence may be imposed. The Court of Appeals is required to review the death sentence on the record. Administration of the death penalty must be carried out by the Division of Correction in the Department of Public Safety and Correctional Services.

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.

The first call for a moratorium came from the American Bar Association in 1997, proposing a temporary halt while states put in place policies to ensure fairness and to

minimize the risk of executing the innocent. Nebraska's approval of a moratorium in 1999 was vetoed by the governor. In New Hampshire, where no one is on death row, the legislature voted in 2000 to abolish executions, but the governor vetoed the measure. Illinois and Maryland are the only states to have adopted moratoriums, though others have considered them.

In January 2003, before leaving office, Illinois Governor George Ryan commuted the sentences of 167 inmates to life imprisonment due to grave concerns about the equity of death penalty application in Illinois. Illinois has had a death penalty moratorium for three years and completed a comprehensive review of its death penalty system. The moratorium continues under the new Illinois governor.

In Maryland, since the death penalty was reinstated 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 12 persons under sentence of death. Since the death penalty moratorium was lifted in January, a warrant of execution was completed on one inmate, Steven Oken, who was scheduled to be executed the week of March 17 in 2003. However, the Court of Appeals has stayed Oken's execution based on his challenges to Maryland's sentencing procedures for the death penalty. The Court of Appeals has tentatively scheduled a hearing for May. Three other inmates have just about exhausted all challenges and could be scheduled for execution this spring or summer. Three additional inmates could be scheduled for execution before the end of 2003.

Although Maryland's death penalty was reinstated in 1978, there have been continuing concerns about its administration long before the moratorium in 2002. Since 1978, there have been four major investigations into the death penalty, with some focus on the issues of racial disparity and arbitrariness.

In 1987, the Maryland Court of Appeals requested that the Office of the Public Defender collect some information on death sentencing patterns from 1978 to 1987. That study noted substantial variation between counties regarding the filing of death penalty notices. The office also noted a greater propensity to pursue a death penalty sentence when the homicide victim was white, rather than black.

In 1993, the Governor's Commission on the Death Penalty in Maryland published its report, which analyzed death penalty cases from 1978 to 1993. The study was limited to cases where a death sentence was actually imposed, penalty phase hearings occurred regarding life imprisonment without parole, and cases where death notifications were filed but later withdrawn. The commission determined that there was no conclusive evidence of racial discrimination, although it expressed concern about the possibility of racial disparities.

In 1996, the Task Force on the Fair Imposition of Capital Punishment was created to examine racial discrimination in the imposition of the death penalty. It reviewed the racial composition of Maryland's death row and expressed concern about the high number of black defendants on death row and the low number of prisoners under death sentence who had murdered black victims. The task force recommended a more comprehensive, empirical study of the death penalty.

In February 2001, professors from the University of Iowa conducted an analysis of racial disparities among 346 first degree murder cases with a death penalty notification. They found that defendants who killed white victims were more likely to advance to a death penalty trial and more likely to receive a death sentence. The study was regarded as preliminary and called for further analysis.

Meanwhile, in 2000, Governor Glendening authorized \$225,000 for an empirical study of racial disparity and fairness issues by the Criminology Department at the University of Maryland, College Park. *An Empirical Analysis of Maryland's Death Sentencing System With Respect To The Influence Of Race and Legal Jurisdiction* was released in January 2003 and included 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 until December 1999. The University of Maryland study found that the race of the offender did not have a significant impact in the death penalty process. However, the jurisdiction where the murder was prosecuted and the race of the victim did affect application of the death penalty. Generally, the early decisions made by prosecutors, specifically whether a case is eligible for the death penalty, and the decision to retain or drop pursuit of a death sentence were major factors in determining who faced execution. Similar studies of the equity of death penalty implementation have been conducted in Nebraska, Illinois, Indiana, North Carolina, and Virginia. Virginia's study of its death penalty system was released in January 2003. That study found there was no untoward disparity based on race or any other factor that impaired administration of its death penalty.

Additional Comments: See **Exhibits 1** and **2** for further detail on death row inmates and executions nationally.

Additional Information

Prior Introductions: None.

Cross File: SB 12 (Senator Hughes, *et al.*) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Office of the Attorney General, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2003
ncs/cer

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Exhibit 1
Total Executions By State Since 1976

State	Current Death Row Inmates	Executions Since 1976
Alabama	190	25
Alaska	<i>NO DEATH PENALTY</i>	
Arizona	125	22
Arkansas	42	24
California	613	10
Colorado	5	1
Connecticut	7	0
Delaware	20	13
Florida	386	54
Georgia	120	31
Hawaii	<i>NO DEATH PENALTY</i>	
Idaho	22	1
Illinois	0	12
Indiana	40	9
Iowa	<i>NO DEATH PENALTY</i>	
Kansas	4	0
Kentucky	39	2
Louisiana	97	27
Maine	<i>NO DEATH PENALTY</i>	
Maryland	12	3
Massachusetts	<i>NO DEATH PENALTY</i>	
Michigan	<i>NO DEATH PENALTY</i>	
Minnesota	<i>NO DEATH PENALTY</i>	
Mississippi	69	6
Missouri	70	59
Montana	6	2
Nebraska	7	3
Nevada	87	9
New Hampshire	0	0
New Jersey	16	1
New Mexico	3	1
New York	5	0
North Carolina	219	23
North Dakota	<i>NO DEATH PENALTY</i>	
Ohio	202	5
Oklahoma	119	55
Oregon	30	2
Pennsylvania	244	3
Rhode Island	<i>NO DEATH PENALTY</i>	
South Carolina	76	28
South Dakota	5	0
Tennessee	106	1
Texas	454	289
Utah	11	0
Vermont	<i>NO DEATH PENALTY</i>	
Virginia	26	87
Washington	12	4
West Virginia	<i>NO DEATH PENALTY</i>	
Wisconsin	<i>NO DEATH PENALTY</i>	
Wyoming	2	1
US Military	7	0
US Government	24	0
TOTALS	3,497	820

Source: Death Penalty Information Center, December 2002

Exhibit 2

Freed from Death Row

(Since 1976)

Average number of years between being sentenced to death and release: 7.8 years

By State

Florida	22	New Mexico	4	Ohio	2
Illinois	175	North Carolina	3	Maryland	1
Oklahoma	7	Pennsylvania	3	Massachusetts	2
Texas	7	South Carolina	3	Mississippi	1
Georgia	6	Alabama	3	Nevada	1
Louisiana	5	Indiana	2	Washington	1
Arizona	5	Missouri	2	Virginia	1
Idaho	1	Nebraska	1		

Source: Death Penalty Information Center, January 2003