

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

House Bill 985

(Delegate Kelley, *et al.*)

Judiciary

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**Criminal Procedure – Prohibition Against Death Sentence After Prosecutorial Misconduct**

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This bill provides that a defendant may not be sentenced to death, but must be sentenced to imprisonment for life without the possibility of parole or imprisonment for life, if:

- the defendant's conviction was previously reversed on appeal to the Court of Appeals involving a case in which the State previously filed a notice of intention to seek the death penalty; and
- the Court of Appeals made a finding of prosecutorial misconduct in the case including, but not limited to, a violation of the prosecutor's duty to disclose material or information tending to negate or mitigate the guilt or punishment of the defendant as to the offense charged.

The bill has prospective application.

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**Fiscal Summary**

**State Effect:** The bill's requirements could be met with existing resources.

**Local Effect:** The bill's requirements could be met with existing resources.

**Small Business Effect:** None.

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## Analysis

**Current Law:** A defendant found guilty of murder in the first degree may be sentenced to death only if the State gives the defendant 30 days' notice to seek a death sentence and each aggravating circumstance on which the State intends to rely. A defendant found guilty of murder in the first degree of a law enforcement officer may be sentenced to death only if the defendant: (1) was a principal in the first degree; or (2) was a principal in the second degree who willfully, deliberately, and with premeditation intended the death of the law enforcement officer, was a major participant, and was actually present at the time and place of the murder, and the death sentence is imposed as provided by law.

A defendant is "mentally retarded" if the defendant had significantly below average intellectual functioning as shown by an intelligence quotient of 70 or below, an impairment in adaptive behavior, and the mental retardation manifested before the age of 22.

A defendant may not be sentenced to death, but must be sentenced to imprisonment for life without the possibility of parole, if the defendant was under the age of 18 at the time of the murder or proves by a preponderance of the evidence that the defendant was mentally retarded at the time of the murder.

**Background:** In 2003, the Center for Public Integrity released a study of the impact of prosecutorial misconduct and the impact on criminal convictions, which involved a review of 11,452 court cases from all 50 states. The study, called *Harmful Error: Investigating America's Local Prosecutors*, found that since 1970, when judges and appellate court panels began citing prosecutorial misconduct as a factor when dismissing charges, convictions were reversed or sentences were reduced in over 2,000 cases. In 500 cases, appellate judges offered dissents or concurrences in which they found the cited misconduct warranted a reversal. In thousands of other cases, judges identified inappropriate prosecutorial behavior but upheld the convictions due to the doctrine of harmless error.

The study found that a review of Maryland's criminal cases from 1970 revealed 103 cases in which the defendant alleged prosecutorial misconduct. In 23 of those cases, the judges ruled that the prosecutor's conduct prejudiced the defendant and the conviction, sentence, or indictment was reversed or remanded. Of the 23 cases, 16 involved improper trial arguments and tactics and five involved withholding exculpatory evidence from the defense. One case involved a conflict of interest and one other case involved denial of a speedy trial.

## **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, Department of Public Safety and Correctional Services, Illinois Coalition Against the Death Penalty, The Center for Public Integrity, Department of Legislative Services

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