

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE

House Bill 1161 (Delegate Kelley, *et al.*)
 Judiciary

Death Penalty - Maryland Commission on Capital Punishment

This bill establishes the Maryland Commission on Capital Punishment (MCCP). The bill is effective July 1, 2005 and terminates December 31, 2006.

Fiscal Summary

State Effect: General fund expenditures could increase by \$84,000 in FY 2006 to provide staff support to the commission. Out-year expenditures include inflation and termination of the commission by December 31, 2006.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	84,000	48,500	0	0	0
Net Effect	(\$84,000)	(\$48,500)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies the commission’s membership and provides for the members to elect the chairman. MCCP may hold public hearings and all State, county, and municipal units of government must cooperate fully with MCCP. The Maryland Justice Analysis Center of the Department of Criminology at the University of Maryland is required to staff MCCP. The necessary funding will be as provided in the State budget.

Commission members may not receive compensation, but are entitled to reimbursement for travel expenses in accordance with the standard State travel regulations.

MCCP must study capital punishment in Maryland and review:

- the findings of a two-year study by the University of Maryland on implementation of the death penalty in Maryland;
- the June 2001 protocols of the American Bar Association Section of Individual Rights and Responsibilities;
- a report of the Constitution Project's bipartisan, blue ribbon commission of capital punishment supporters and opponents; and
- other nonpartisan, academic, or governmental inquiries into the administration of capital punishment at the State and national levels.

MCCP recommendations must address racial, jurisdictional, and socioeconomic disparities. They must also address the risk of innocent people being executed, evolving standards of decency, and a comparison of the costs to implement the death penalty to life imprisonment without the possibility of parole. MCCP must make recommendations that guarantee that the administration of the death penalty and State policy regarding capital punishment is free from bias and error and are intended to guarantee fairness and accuracy.

MCCP must make a preliminary report on its findings and recommendations to the House Judiciary and the Senate Judicial Proceedings committees during the 2006 legislative session. The final report is due to the General Assembly by November 30, 2006.

Current Law: 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 10 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 exist and whether the aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. If a court or jury finds for

the existence of aggravating factors and that they 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. Implementation of the death penalty must be carried out by the Division of Correction in the Department of Public Safety and Correctional Services (DPSCS).

Background: Currently 38 states have 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. No state has repealed its death penalty in recent history, although there has been some consideration of adding a death penalty in states that do not currently have it. On March 1, 2005, in the case, *Roper v. Simmons*, 543 U.S. (2005) the U.S. Supreme Court held that imposition of the death penalty against a person younger than the age of 18 (when he/she committed a death-penalty eligible crime) violates the Constitutional prohibition against cruel and inhuman punishment.

Illinois and Maryland are the only two states that have officially instituted death penalty moratoriums. The Maryland moratorium was implemented through executive action in May 2002 and ended when Governor Robert Ehrlich took office in January 2003. In 2000, then Illinois Governor George Ryan instituted a moratorium on the death penalty in Illinois. In January 2003, before leaving office, Governor Ryan commuted the sentences of 167 inmates to life imprisonment due to grave concerns about the equity of the death penalty in Illinois. In November 2003, Illinois enacted comprehensive death penalty reform legislation. The legislation altered the procedures for police lineups, broadened evidence disclosure requirements, provided greater access to DNA testing, and reduced the level of reversible error that would have to exist before the Illinois Supreme Court could overturn a capital case. However, the Illinois death penalty moratorium continues. Governor Rod Blagojevich has said that the moratorium will not be lifted until the effectiveness of the legislative reforms is studied. No time limit for the Illinois moratorium was set by the Governor.

In Maryland, since the death penalty was reinstated on July 1, 1978, there have been 53 persons sentenced to death (representing the imposition of 78 death sentences). To date, four persons have been executed, three in the 1990s and one in 2004. According to DPSCS, there are nine persons currently on Maryland's death row.

In 2000, then Governor Parris Glendening authorized \$225,000 for a study of racial disparity and fairness issues by the Criminology Department at the University of Maryland – College Park. The study was released in January 2003 and included data collection from a wide variety of sources 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.

State Expenditures: General fund expenditures could increase by \$83,999 in fiscal 2006 to provide the staffing required by the bill. The University of Maryland – College Park advises that the Maryland Justice Analysis Center does not have a permanent budget and, as a result, does not have the resources to staff the commission.

The University of Maryland – College Park has estimated that a director, two research assistants, and one administrative assistant would be needed to staff the commission at a cost of \$176,212 in fiscal 2006. The Department of Legislative Services (DLS) disagrees with this assessment. The bill does not require the creation of a new death penalty study, which could require significant staff resources. The bill requires a review of existing studies and reports about the death penalty, one of which has already been completed by the Justice Analysis Center. Staff would also be needed to help the commission in formulating its recommendations and to take care of any administrative tasks required by the commission. DLS advises that one professional staff person and one administrative assistant on a contractual basis should be sufficient to support the commission.

Salaries and Fringe Benefits	\$73,309
Other Operating Expenses	<u>10,690</u>
Total FY 2006 State Expenditures	\$83,999

Future year expenditures reflect termination of the commission by December 31, 2006.

Additional Information

Prior Introductions: This bill is a reintroduction of SB 744 of 2004, which passed the Senate, as amended, and was heard in the Judiciary Committee, but received no further action. A similar bill, HB 665 of 2003, which would have established a Task Force to

Study the Need for Prosecutorial Guidelines and Procedures to Govern Death Penalty Decisions, was heard in the Judiciary Committee, but received no further action.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Governor's Office, University System of Maryland, Department of Public Safety and Correctional Services, Death Penalty Information Center, Equal Justice, USA, The U.S. Supreme Court, Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2005
ncs/jr

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