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By: **Delegate Marriott**

Rules suspended

Introduced and read first time: March 24, 2006

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Death Penalty - Moratorium**

3 FOR the purpose of establishing a moratorium on the execution of an individual who  
4 has been sentenced to death until a certain date; prohibiting a judge from  
5 issuing a warrant of execution and providing that any warrants of execution  
6 issued for which the individual has not been executed are void; requiring certain  
7 standing committees of the General Assembly to review a certain report, assess  
8 the current status of DNA testing, and study the training and compensation  
9 available for certain attorneys representing indigent capital defendants;  
10 requiring the committees to make certain recommendations and, if necessary,  
11 propose certain legislation based on their study by a certain date; providing for  
12 the construction of this Act; making this Act an emergency measure; and  
13 generally relating to the death penalty.

14 BY adding to  
15 Article - Correctional Services  
16 Section 3-910  
17 Annotated Code of Maryland  
18 (1999 Volume and 2005 Supplement)

19 **Preamble**

20 WHEREAS, A 2003 University of Maryland study, commissioned and funded by  
21 the State, analyzed all death-eligible murders committed between August 1978 and  
22 December 1999 to determine whether the State's death penalty was being sought and  
23 imposed in an evenhanded and just manner; and

24 WHEREAS, The study documented a pattern of racial inequality in the seeking  
25 and imposition of the death penalty in this State; for example, the study showed that  
26 the probability that black defendants charged with killing white victims will be  
27 sentenced to death is twice as high as the probability that white defendants charged  
28 with killing white victims will be sentenced to death; and

1 WHEREAS, The study further revealed geographic disparities in the seeking  
2 and imposition of the death penalty among the different jurisdictions in the State; for  
3 example, the probability that prosecutors in Baltimore County will seek a death  
4 sentence is nearly thirteen times higher than the probability that prosecutors in  
5 neighboring Baltimore City will do so for an identical crime; and

6 WHEREAS, The General Assembly has yet to properly consider the alarming  
7 conclusions drawn in this extensive, State-funded study; and

8 WHEREAS, In 1993, Maryland prisoner Kirk Bloodsworth, who had twice been  
9 convicted of murder by a jury in Baltimore County, became the first death row  
10 prisoner in the United States exonerated through the use of DNA testing; and

11 WHEREAS, If Maryland is to continue to impose the ultimate sentence, it must  
12 do so only where guilt is absolutely certain, and essential to this certainty are access  
13 to DNA testing and quality legal representation for capital defendants; and

14 WHEREAS, While the General Assembly has enacted legislation providing for  
15 DNA testing in criminal trials and preservation of scientific identification evidence so  
16 that it can be tested in subsequent proceedings, some law enforcement officials and  
17 State's Attorney's offices have resisted compliance with the statute's mandates and  
18 have hindered the statute's effectiveness in preventing or revising wrongful  
19 convictions; and

20 WHEREAS, Despite admirable work by many in the State's public defender  
21 system, capital defendants in Maryland have not received adequate legal  
22 representation; in June 2003, for example, the U.S. Supreme Court issued a rare  
23 decision overturning the capital sentence of Maryland prisoner Kevin Wiggins  
24 because he had received ineffective assistance of counsel; and

25 WHEREAS, Maryland courts have overturned several capital sentences on the  
26 same grounds; and

27 WHEREAS, More funds are needed for training for public defenders assigned to  
28 capital cases; and

29 WHEREAS, Attorneys representing indigent capital defendants in federal  
30 courts in this State are paid more than three times the hourly rate of those  
31 representing capital defendants in Maryland courts, which significantly diminishes  
32 the Maryland Public Defender's ability to recruit qualified attorneys; and

33 WHEREAS, This discrepancy in compensation must be addressed so that  
34 indigent capital defendants in Maryland courts are assured quality representation;  
35 and

36 WHEREAS, A federal judge in California recently forbade corrections officials  
37 in that state from carrying out executions by lethal injection using California's  
38 current procedures because those procedures created a grave risk that condemned  
39 inmates would be tortured to death; and

1 WHEREAS, The Maryland Division of Correction employs procedures similar  
2 to those enjoined in California, thus risking that condemned inmates in Maryland  
3 will suffer cruel and unusual punishment; and

4 WHEREAS, The procedures employed by the Division of Correction conflict  
5 with the express language of the State's death penalty procedures statute, Title 3,  
6 Subtitle 9 of the Correctional Services Article, and have never been promulgated as  
7 contemplated by the State's Administrative Procedure Act, Title 10, Subtitle 1 of the  
8 State Government Article; and

9 WHEREAS, Concerned about problems in their own states similar to those  
10 present in Maryland, Illinois, and New Jersey have imposed moratoria on the death  
11 penalty until these problems can be carefully studied and reforms proposed and  
12 adopted, and similar moratoria are pending in the legislative bodies of several other  
13 states; and

14 WHEREAS, In February of this year, the Maryland Court of Appeals  
15 dramatically halted the executive of Vernon Evans, Jr. just hours before it was to take  
16 place, agreeing to hear challenges to his death sentence based on ineffective  
17 assistance of counsel, racial discrimination in jury selection, selective prosecution,  
18 systemic racial and geographic discrimination in the imposition of the death penalty,  
19 and claims that the lethal injection procedures employed by the Division of Correction  
20 violate the State's death penalty procedures statute and were not promulgated in  
21 compliance with the Administrative Procedures Act; now, therefore,

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Correctional Services**

25 3-910.

26 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN INDIVIDUAL WHO  
27 HAS BEEN SENTENCED TO DEATH MAY NOT BE EXECUTED BEFORE DECEMBER 31,  
28 2008.

29 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A JUDGE MAY NOT  
30 ISSUE A WARRANT OF EXECUTION AND ANY WARRANTS OF EXECUTION ISSUED FOR  
31 WHICH THE INDIVIDUAL HAS NOT BEEN EXECUTED ARE VOID.

32 SECTION 1. AND BE IT FURTHER ENACTED, That the Senate Judicial  
33 Proceedings Committee and the House Judiciary Committee shall:

34 (a) consider the report of the 2003 study on the administration of the death  
35 penalty that was submitted by the Department of Criminology of the University of  
36 Maryland, College Park;

37 (b) assess the current status of DNA testing in the State;

1 (c) study the training and compensation currently available to attorneys  
2 representing indigent capital defendants and determine the level of funding required  
3 to provide the training and compensation necessary to ensure quality legal  
4 representation in capital cases; and

5 (d) submit a report, on or before December 31, 2007, in accordance with §  
6 2-1246 of the State Government Article, to the Legislative Policy Committee, that  
7 includes recommendations based on their study and, if necessary, proposes legislation  
8 to implement those recommendations.

9 SECTION 3. AND BE IT FURTHER ENACTED, That, except as provided in  
10 Section 1 of this Act, this Act may not be construed to affect in any other way the law  
11 concerning the death penalty, including the procedures and time frames for  
12 notifications, determinations, and judicial review of death penalty decisions.

13 SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an  
14 emergency measure, is necessary for the immediate preservation of the public health  
15 or safety, has been passed by a ye and nay vote supported by three-fifths of all the  
16 members elected to each of the two Houses of the General Assembly, and shall take  
17 effect from the date it is enacted.