

**Department of Legislative Services**  
 Maryland General Assembly  
 2008 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 1111  
 Judiciary

(Delegate Dumais)

Judicial Proceedings

**Death Penalty - Maryland Commission on Capital Punishment**

This bill establishes a Maryland Commission on Capital Punishment (MCCP), staffed by the Maryland Statistical Analysis Center in the Governor’s Office of Crime Control and Prevention. MCCP must make a final report, and if applicable, a minority report, on its findings and recommendations to the General Assembly by December 15, 2008.

The bill takes effect July 1, 2008 and terminates December 31, 2008.

**Fiscal Summary**

**State Effect:** General fund expenditures could increase by \$46,200 in FY 2009 only to provide staff support to the commission. Any expense reimbursements for commission members are assumed to be minimal and absorbable within existing resources.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	46,200	0	0	0	0
Net Effect	(\$46,200)	\$0	\$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 Governor, the President of the Senate, and the Speaker of the House to jointly appoint the chairman. MCCP must hold public hearings and all State, county, and municipal units of government must cooperate fully with 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 all aspects of capital punishment as currently and historically administered in the State.

MCCP recommendations must address racial, jurisdictional, and socioeconomic disparities and the risk of innocent people being executed. They must also compare the effects of prolonged capital punishment cases and those involving life imprisonment without the possibility of parole, a comparison of the costs to implement the death penalty to life imprisonment without the possibility of parole, and the impact of DNA evidence in assuring fairness and accuracy in capital cases. MCCP must make recommendations concerning the application and administration of capital punishment so that they are free from bias and error and achieve fairness and accuracy.

**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 8 mitigating factors exist and whether the aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. If a court or jury finds 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.

**Background:** There are currently 36 states with the death penalty. The following 14 states and the District of Columbia do not currently have a death penalty statute: Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin. New Jersey is the first state in recent history to legislatively repeal its death penalty. The New Hampshire legislature voted to repeal its death penalty in 2000, but the governor vetoed the legislation. Other states, including Maryland, Montana, New Mexico, and Nebraska, have also considered taking such action.

A New Jersey Death Penalty Study Commission was created in 2005 to study all aspects of the death penalty. The final report was submitted to the governor and legislature on January 2, 2007.

The commission's findings were that:

- there is no compelling evidence that the New Jersey death penalty rationally serves a legitimate penological intent;
- death penalty costs are greater than the costs of life imprisonment without parole, but the costs cannot be measured with any degree of precision;
- there is increasing evidence that the death penalty is inconsistent with evolving standards of decency;
- available data do not support a finding of invidious racial bias in New Jersey's application of the death penalty;
- abolition of the death penalty will eliminate the risk of disproportionality in capital sentencing;
- the penological interest in executing a small number of persons guilty of murder is not sufficiently compelling to justify the risk of an irreversible mistake;
- the alternative of life imprisonment in a maximum security institution without the possibility of parole sufficiently ensures public safety and addresses other legitimate social and penological interests, including those of the families of murder victims; and
- sufficient funds should be dedicated to ensure adequate services and advocacy for the families of murder victims.

The commission's recommendations were accepted by the New Jersey legislature and the governor and legislation was enacted in December 2007 abolishing the death penalty in that state. The death sentences of eight men on death row were commuted to life imprisonment without the possibility of parole. According to the commission, keeping inmates on death row costs over \$70,000 annually while keeping those same inmates in the general population would cost about \$40,000 annually. Savings from repeal were

estimated at about \$1.3 million per inmate over his lifetime. The last execution in New Jersey took place in 1963. A state appeals court ruled in 2004 that the New Jersey procedures for administering the death penalty were unconstitutional. The state revised the procedures but did not finalize them and they expired in 2005.

Implementation of the death penalty has been effectively halted nationwide since the U.S. Supreme Court agreed to hear the appeal in *Baze v. Rees* (No. 07-5439). In September 2007, the court agreed to consider the constitutionality of the lethal injection process as administered in Kentucky. Two death row inmates, Ralph Baze and Thomas Clyde Bowling, Jr., sued Kentucky in 2004 claiming that the state's lethal injection process amounted to cruel and unusual punishment. The Kentucky Supreme Court upheld the procedure's constitutionality. The U.S. Supreme Court heard oral arguments in this case on January 7, 2008. The case has wide-ranging implications because the Kentucky procedures for lethal injection are substantially similar to the procedures used in many other states, including Maryland.

The Maryland Court of Appeals ruling in *Evans v. State*, 395 Md. 256 (2006) effectively halted executions in Maryland in advance of the developments in the *Baze* case. In the *Evans* case, the Court of Appeals found that the procedures for lethal injection were implemented without the input required by the Administrative Procedure Act. The court held that the DOC protocols are ineffective until either • the protocols are adopted as regulations under the Administrative Procedure Act; or • the General Assembly exempts the protocols from the notice and hearing procedures in the Act. To date, new regulations to adopt the protocols have not been issued by the DPSCS and the General Assembly has not passed legislation exempting the procedure from the Administrative Procedure Act.

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, 5 persons have been executed, 3 in the 1990s, one in 2004 and one in 2005. According to DPSCS, there are 5 persons currently on Maryland's death row.

In 2000, 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 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.

**State Expenditures:** General fund expenditures could increase by \$46,216 in fiscal 2009 only to provide the staffing required by the bill.

This estimate assumes that, in addition to original research, the commission could build upon existing studies and reports about capital punishment, one of which has already been completed by the former Justice Analysis Center. In addition, the bill's requirements are substantially similar to what was required of the New Jersey Death Penalty Study Commission, which issued its comprehensive report in January 2007. The commission can draw upon the resources of State agencies and county and municipal governments, all of which would be required to cooperate with MCCP. The six-month duration of the commission also limits the expenditures that could be required.

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### **Additional Information**

**Prior Introductions:** This bill is similar to SB 744 of 2004, as amended, which passed the Senate and was heard in the House 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:** SB 614 (Senator Raskin) – Judicial Proceedings.

**Information Source(s):** University System of Maryland, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2008  
ncs/jr Revised - House Third Reader - March 26, 2008  
Revised - Enrolled Bill - April 24, 2008

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