

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1576 (Delegate Serafini, *et al.*)
Rules and Executive Nominations

Criminal Law - Death Penalty - Evidence of Murder of Correctional Officer

This bill specifies that certain restrictions on and evidentiary requirements for the application of the death penalty do not apply in a case in which a correctional officer was murdered: (1) while the officer was on duty and performing the officer's duties; or (2) while the officer was not on duty if the murder was committed in retaliation for the officer's actions while on duty.

The bill takes effect October 1, 2009, contingent on the enactment of SB 279 of the Acts of the General Assembly of 2009.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing resources.

Local Effect: The bill's requirements can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: 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 defendant who was younger than age 18 at the time of the murder may not be sentenced to death. A defendant who can

prove by a preponderance of the evidence that he/she was “intellectually disabled” at the time of the murder is also exempt from the death penalty.

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. Aggravating circumstances include a murder committed while the defendant was confined in a correctional facility or a murder committed in furtherance of an escape from, an attempt to escape from, or an attempt to evade lawful arrest, custody, or detention by a guard or officer of a correctional facility.

If the presence of one or more aggravating circumstances is found, the court or jury must consider whether one or more of eight mitigating circumstances 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 circumstance and that they outweigh the mitigating circumstance, or no mitigating circumstance is 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 (DOC) in the Department of Public Safety and Correctional Services (DPSCS).

Background: SB 279 of the Acts of the General Assembly of 2009 restricts the death penalty to cases in which the State presents the court or jury with (1) biological evidence or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. The bill prohibits a defendant from being sentenced to death if the State relies solely on evidence provided by eyewitnesses in its case.

SB 279 of 2009 was passed by the General Assembly on March 26, 2009 and has an effective date of October 1, 2009.

Maryland Commission on Capital Punishment: 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. Chapters 430 and 431 of 2008 established the Maryland Commission on Capital Punishment to study all aspects of capital punishment as currently and historically administered in the State. The commission held five public hearings during which it

heard testimony from judges, law professors, attorneys, and others with expertise in or experience with the death penalty. The commission held five additional meetings to discuss the evidence presented at the hearings. In a 13-9 vote, the commission recommended abolishing capital punishment in Maryland. The commission's report noted that there was no evidence presented that the death penalty alleviates threats to the safety of correctional officers. However, the commission's minority report disagreed with this assessment and noted that "[s]ome commissioners believe that if there is action to repeal the death penalty, that it is extremely important to at a minimum, retain it for the murder of police officers or correctional officers."

Other States: A number of states that impose the death penalty establish the murder of a correctional employee or officer as a capital offense or aggravating circumstance for a capital offense.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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