

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 404  
Judicial Proceedings

(Senator Stone, *et al.*)

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Criminal Law - Death Penalty - Evidence

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This bill extends eligibility for the death penalty to cases in which the State presents the court or jury with fingerprint evidence or photographic evidence that conclusively links a defendant convicted of first degree murder to the murder. In addition, the bill requires that biological or DNA evidence and allowable video evidence presented by the State in a death penalty case conclusively link the defendant to the murder.

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Fiscal Summary

**State Effect:** Any increase in the number of death penalty cases due to the bill's provisions can be handled with existing resources.

**Local Effect:** Any increase in the number of death penalty cases due to the bill's provisions can be handled with existing resources.

**Small Business Effect:** None.

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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. Pursuant to Chapter 186 of 2009, the death penalty may only be imposed in 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. A defendant is prohibited from being sentenced to death if the State relies solely on evidence provided by eyewitnesses in its case.

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 mentally retarded 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. 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).

**State Expenditures:** DPSCS advises that the bill does not have a fiscal impact on the department. Legislative Services concurs with this assessment. The limitations on death penalty eligible cases contained in Chapter 186 of 2009 did not go into effect until October 1, 2009. DPSCS has not experienced a material change in resources since that date that would result in the bill's changes having a significant fiscal or operational impact on DPSCS.

OPD advises that the bill would have a significant impact on OPD workloads to the point that if the bill resulted in five additional death penalty cases, the office would need to hire five additional attorneys at a cost of \$373,990 in fiscal 2011. Legislative Services disagrees with this estimate. In July 2009, OPD moved its Capital Defense Division under District Operations but did not experience a reduction in legal staff as a result of the 2009 legislation. Prior to the 2009 legislation, there were no statutory evidentiary restrictions on death penalty cases. While an increase in death penalty cases as a result of this bill may increase OPD operational costs, any increase would be minimal and OPD has resources to handle cases at the pre-October 2009 level.

**Local Expenditures:** Local expenditures for State's Attorneys are not likely to be affected as a result of the bill. The State's Attorney's Office for Baltimore County

advises that it has not prosecuted any death penalty cases since the 2009 legislation was enacted and anticipates that any increase in cases as a result of the bill will be minimal.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General, Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, Office of the State's Attorney for Baltimore County, Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2010  
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