150th GENERAL ASSEMBLY
FISCAL NOTE

BILL:	**HOUSE BILL NO. 165**
SPONSOR:	**Representative Smyk**
DESCRIPTION:	**AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE EXTREME CRIMES PROTECTION ACT.**

Assumptions:

1. This Act, known as the Extreme Crimes Protection Act, becomes effective upon signature by the Governor.
2. This Act revises Delaware's death penalty statute to ensure its compliance with the United States Constitution, as interpreted by the United States Supreme Court in Hurst v. Florida, and by the Delaware Supreme Court in Rauf v. State. This Act also revises Delaware's death penalty statute to comply with the United States Supreme Court's holding in Hall v. Florida, interpreting standards set forth in Atkins v. Virginia. Further, this Act adopts the term "intellectual disability" used by the United States Supreme Court and also recognizes developing trends in death penalty jurisprudence and the American Bar Association's Resolution 122A (2006), by prohibiting the imposition of the death penalty upon a person who has been found "guilty, but mentally ill," as defined by Title 11 § 401.
3. This Act requires that before a death sentence can be imposed, a jury (unless the defendant waives his or her right to one) must first determine unanimously and beyond a reasonable doubt:
    a. that at least 1 statutory aggravating circumstance exists;
    b. which (if any) statutory and non-statutory aggravating circumstances alleged by the State exist; and
    c. whether all of the aggravating circumstances found to exist outweigh all of the mitigating circumstances found to exist.
4. Attorneys from the Office of Defense Services (ODS) and Office of Conflicts Counsel (OCC) have defended the majority of recent capital cases. Federal case law mandates that any defendant facing capital punishment has to be represented by a capital defense team with a minimum of two attorneys, a mitigation specialist, an investigator, and other service providers. In addition, the American Bar Association's Guidelines require at least one member of the defense team to be able to screen for mental health or psychological disorders or impairments. Multiple clients increase the need for resources even further by requiring the OCC to assemble, and pay for, multiple capital defense teams for the same case.
5. ODS estimates that one capital case can cost 3 to 5 times more than a non-capital first-degree murder case. In Fiscal Year 2019, the OCC has spent approximately $1.84 million on first-degree murder cases. If these were capital cases, as they almost all were in the past, ODS estimates that the cost would be approximately $6 million for the fiscal year.
6. Additionally, it is assumed that the Department of Justice (DOJ) and the Judiciary may experience an increase in costs due to an increased need for things such as transcription services or an increase in the use of attorney time for prosecution.

7. Lastly, ODS has indicated that it is presently defending 33 clients facing first-degree murder charges. It is assumed that the DOJ would only be able to seek capital punishment after the effective date of this Act. Due to the uncertainty surrounding how many individuals may face charges eligible for capital punishment in the future, the fiscal impact to the State will likely be significant, remains indeterminable at this time.

Cost:

Fiscal Year 2020:	Indeterminable
Fiscal Year 2021:	Indeterminable
Fiscal Year 2022:	Indeterminable

Prepared by Jason R. Smith
Office of the Controller General