



**149th GENERAL ASSEMBLY
FISCAL NOTE**

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| BILL: | HOUSE BILL NO. 125 |
| 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 would become effective upon signature of the Governor.
2. This Act revises Delaware's punishment statute relating to first-degree murder committed by adults. This Act revises the existing statute to ensure its compliance with the United States Constitution, as interpreted in *Hurst v. Florida*, and by the Delaware Supreme Court in *Rauf v. State*.
3. This Act will require that before a death sentence can be imposed, a jury (unless the Defendant waives their right to one), must first determine unanimously and beyond a reasonable doubt the following:
 - 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. Additionally this Act revises Delaware's death penalty statute to comply with the United States Supreme Court's holding in *Hall v. Florida* by adopting the term and definition of "intellectual disability" used by the United States Supreme Court.
5. There are a number of factors to consider when determining the costs and savings associated with capital punishment to the State. The following areas of costs and savings have been analyzed for this Act:
 - a. This Act does not include changes that would impact the possible number of capital cases.
 - b. The majority of costs and savings to the State can be realized within the Office of Defense Services (ODS). ODS is responsible for defending a large portion of the State's capital murder cases. The State spends more to defend capital cases within the ODS than non-capital cases. Included in these costs are the following:
 - i. any investigatory matters
 - ii. mandatory appeals
 - iii. expert witnesses
 - iv. and multiple attorneys assigned to capital cases where required by federal law.
 - c. Capital defense cases increase in cost significantly when a defendant facing the death penalty has a conflict with the Public Defender's office within ODS as a majority of the ODS' in-house resources cannot be utilized. These cases must be defended by private

attorneys within the ODS' Office of Conflicts Counsel (OCC). When a capital case is defended by OCC, the State incurs costs for at least two private attorneys, a mitigation specialist, an investigator, plus expert testimony and other support required to defend the case.

- d. Any cost savings associated with the suspension of Delaware's capital punishment penalty would be similar to the costs mentioned above.
- e. The Office of the Attorney General prosecutes capital murder cases in the same manner as non-capital murder cases and as a result does not incur any increased costs associated with these cases. Similarly, there has been no cost savings realized since the suspension of capital punishment.
- f. In August of 2016, the Supreme Court found the State's capital punishment statute unconstitutional. Just prior to the decision, both agencies were allocated funds in Senate Bill 285 of the 148th General Assembly (FY17 Operating Budget). These allocations were made with anticipation of capital punishment to be a continued option for the State to seek in cases that met the criteria for such.
- g. Upon the suspension of capital punishment, no reductions were applied to the ODS or Office of the Attorney General's operating budgets. Any savings experienced by the agencies were reallocated within to assist in the prosecution and defense of both agencies' substantial non-capital caseloads.
- h. Any costs associated with capital murder cases above and beyond what is currently appropriated for in each of the agencies operating budgets for Fiscal Years 2018 and beyond are dependent upon the number of cases that are presented from year to year. There is no way to estimate with any degree of accuracy the number of murder cases that meet the criteria for capital punishment from year to year, but it is assumed that current trends regarding the number of capital murder cases annually will continue with no substantial increase based on this Act. Based on this assumption, there would be little to no fiscal impact from this Act.

Cost:

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| Fiscal Year 2018 | Indeterminable, assumed to be insignificant |
| Fiscal Year 2019 | Indeterminable, assumed to be insignificant |
| Fiscal Year 2020 | Indeterminable, assumed to be insignificant |