



DELAWARE GENERAL ASSEMBLY
LEGISLATIVE HALL
DOVER, DELAWARE 19901

Bill Seeks to Protect Public, Hold the Worst Offenders Accountable

MAY 17, 2019 -- A bipartisan bill seeking to restore capital punishment in Delaware is pending action in the General Assembly.

Sponsors of the [Extreme Crimes Protection Act](#) say its enactment would reinstate a needed punitive option for those found guilty of the state's worst crimes, while also acting as a restraining factor against the commission of such acts.

Delaware prosecutors have been unable to seek capital punishment for nearly three years.

In January 2016, the U.S. Supreme Court (*Hurst v. State of Florida*) struck down Florida's capital punishment law. Delaware's capital punishment statute, which was similar to that of The Sunshine State, was ruled unconstitutional by the Delaware Supreme Court on August 2, 2016 in *Rauf v. State of Delaware*.

In making their 3-to-2 decision, the Delaware justices examined five questions regarding Delaware's capital punishment law. Among other things, the High Court found that the statute did not meet constitutional standards because it allowed a judge, independent of the findings of a jury, to determine if any aggravating circumstances existed for applying the death penalty.

Additionally, the prevailing justices found fault with the law since it allowed a jury to express an opinion on the existence of aggravating circumstances for the application of capital punishment, even when some jurors dissented. The justices also critically noted such findings could be based on a "preponderance of evidence" rather than the higher "beyond a reasonable doubt" standard.

The new legislation addresses the issues cited in both the federal and state supreme court rulings and makes additional changes intended to further improve the statute.

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Under the new bill:

- No one convicted on a verdict of “guilty, but mentally ill” would be subject to capital punishment.
- Capital punishment could not be imposed unless a jury* unanimously and “beyond a reasonable doubt” found one or more aggravating circumstances that made the offense eligible for capital punishment.
- The scope of the aggravating circumstances to be considered under the sentencing process has been narrowed.
- A jury would have the discretion to give “appropriate weight to any mitigating circumstances” (factors that lessen the severity or culpability of a criminal act), even if their existence had not been proven beyond a reasonable doubt.
- For capital punishment to be imposed, a jury would have to unanimously find that the aggravating factors had been proven beyond a reasonable doubt and that they outweighed the mitigating factors.
- For capital punishment to be implemented, the presiding judge would need to agree with the jury’s findings and impose the sentence.
- Where appropriate, the presiding judge would also have to weigh if the defendant had “an intellectual disability” at the time the crime was committed. If the judge found “clear and convincing” evidence that such an impairment existed, capital punishment could not be imposed.

The measure’s initial prime sponsors are: State Rep. William Carson, D-Smyrna; State Rep. Steve Smyk, R-Milton-Lewes; State Sen. Bruce Ennis, D-Smyrna; and State Sen. Brian Pettyjohn, R-Georgetown.

There are currently 30 states with a capital punishment statute. The federal government and the U.S. military also have the ability to use it.

The new Extreme Crimes Protection Act is similar to House Bill 125, introduced in the last General Assembly. That measure won approval in the House of Representatives, but died in the Senate after the chair of the Judicial & Community Affairs Committee refused to schedule a hearing.

Among other things, the aggravating circumstances cited in the proposed statute include the line-of-duty killing of a police officer, corrections employee, firefighter, or paramedic. Since Delaware’s capital punishment law was struck down, two such deaths have occurred. The shooting of Delaware State Police Corporal Stephen J. Ballard in April 2017; and the murder of correctional officer Lt. Steven Floyd during a riot at the James T. Vaughn Correctional Center in February of the same year.

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A former Delaware State Trooper, **State Rep. Steve Smyk** said he believes the potential imposition of capital punishment impacts criminal behavior. "I am familiar with multiple instances where criminals confessed to investigators that the possibility of the death penalty influenced their actions. The reforms our bill will apply will restore an aspect of the Delaware Code that I believe deters crimes and protects the public."

State Sen. Bryan Pettyjohn said Delaware has a long history of applying capital punishment cautiously, judiciously, and infrequently. "The proposed changes would raise the imposition of such a sentence to a new level, removing what the court found objectionable and strengthening protections for defendants."

State Rep. William Carson said: "While capital punishment will always be highly controversial and potentially divisive, I believe it should be available as an appropriate option for those convicted of our state's worst crimes, such as the murder of police officers, correctional officers, and firefighters."

State Sen. Bruce Ennis said he understands the bill will spark an emotional debate. "We're expecting a spirited discussion and we're looking forward to making our case for adopting changes that will strengthen and improve our capital punishment law, restoring it as an extreme and vital tool in the administration of criminal justice."

Law Enforcement Supports the Extreme Crimes Protection Act:

"It is important to remember that despite the political winds that are creating a different perception of crime and punishment than existed just a few short years ago, that there are still evil people in this world who will do evil things. This act will establish appropriate measures that will not only serve as an effective deterrent to those that might commit such crimes, but will also ensure justice is served when they do."

Todd Mumford
FOP Lodge 10 President

"The Delaware State Troopers Association strongly supports the Extreme Crimes Protection Act. It is high time that Delaware re-establishes the death penalty as a punishment for those criminals who qualify. This legislation clearly addresses the concerns brought forth by the United States Supreme Court as well as Delaware's Supreme Court. If enacted this legislation will make Delaware safer by once again having the ultimate punishment for those who are truly the worst of the worst in Delaware's Criminal Justice System."

Thomas J Brackin
President
Delaware State Troopers Association

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“The Delaware Police Chief’s Council supports the Extreme Crimes Protection Act. The act restores the potential for a death sentence only after exhaustive procedural mandates are satisfied, not the least of which, is the unanimous finding by a jury of aggravating circumstances. Heinous crimes that are so depraved and evil must be atoned by the ultimate punishment.”

Chief Patrick A. Ogden
Chairman
Delaware Police Chiefs’ Council

“The Fraternal Order of Police, Sussex County Lodge Number 2, supports Rep. Stephen Smyk's bill to bring back the death penalty in Delaware in certain cases. Lodge Number 2 realizes the challenges faced by the law enforcement community on a daily basis, and feels very strongly that the law enforcement community and members of the community-at-large it supports and protects needs to have a credible deterrent to the horrendous murders being committed by criminal elements.”

Robert J. (Bobby) Schappert III
President
Fraternal Order of Police,
Sussex County Lodge Number 2

“COAD supports the passage and enactment of the Extreme Crimes Protection Act.”

Geoff Klopp
President
Correctional Officers Association of Delaware

* Assumes the defendant does not waive the right to a trial by jury.

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