

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 975 (Delegate O'Donnell)
Judiciary

Sentencing - Death Penalty - Murder in Violation of Protective Order

This bill provides an additional aggravating circumstance that must be considered in determining a sentence of death. Specifically, the bill adds whether the defendant murdered the victim in violation of an existing ex parte or protective order.

Fiscal Summary

State Effect: The bill is not expected to significantly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Persons convicted of first degree murder 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 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, beyond a reasonable doubt, any of ten aggravating circumstances exist.

If the court or jury does not find that one or more of the aggravating circumstances exist, a sentence of death may not be imposed. If the court or jury finds that one or more aggravating circumstances exist, then the court or jury must consider whether any mitigating circumstances exist. The court or jury then weighs whether the aggravating circumstances outweigh the mitigating circumstances. If so, the death sentence is imposed. If not, the sentence is either life or life without parole.

Whenever the death penalty is imposed, and the judgment becomes final, the Court of Appeals is required to review the sentence on the record. Administration of the death penalty is required to be carried out by the Division of Correction (DOC).

State Fiscal Effect: There are several inherent difficulties in determining the effect of a particular aggravating circumstance. For instance, there is the potential overlap with other aggravating circumstances. In addition, prosecutors exercise discretion and have latitude in bringing such cases. There are also contrasts and dissimilarities as to how different courts and/or juries will view the same presentation of facts with particular sets of circumstances.

In Maryland, since the death penalty was reinstated on July 1, 1978, there have been 52 persons sentenced to death (representing the imposition of 78 death sentences). To date, three persons have been executed, all in the 1990s. There are currently 13 persons under sentence of death. All but one are held at the Maryland Correctional Adjustment Center (one person is in federal custody) at a cost of approximately \$4,000 per month. Four of these 13 inmates could be scheduled for execution in the near future since they are likely to exhaust collateral challenges to their convictions and/or sentences by early 2001.

The DOC reports that 102 offenders were convicted of first degree murder in fiscal 2000. One person was sentenced to death. The division does not currently know how many of the 102 offenders committed were persons to whom the new aggravating circumstances would apply. It is assumed that the number of such instances would be small, and that any additional death sentences imposed pursuant to the bill would not have a discernable fiscal impact on the corrections system or the Judiciary.

The extent to which this additional aggravating circumstance would increase death penalty litigation is unclear. Accordingly, while it is conceivable that this bill could increase the workload and expenditures of the judicial system, including the Office of the Public Defender, any such increase cannot be reliably projected or quantified. In any event, the cost for the Public Defender to defend any additional death penalty cases arising from this bill is estimated to be \$75,000 per case, including the fees and costs associated with utilizing outside (panel) attorneys.

Local Fiscal Effect: The creation of any additional aggravating circumstance could conceivably increase costs for State's Attorneys, but only to the extent that the new provision actually creates additional death penalty cases by a particular State's Attorney. It is assumed the number of such instances would be small statewide.

Additional Information

Prior Introductions: This bill was introduced as HB 815 in the 2000 session; it was unfavorably reported from the House Judiciary Committee. Similar bills were introduced during the 1998 and 1999 sessions. In 1998, HB 558 was withdrawn and SB 19 received an unfavorable report from the Senate Judicial Proceedings Committee. In 1999, HB 553 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Office of State's Attorneys' Coordinator, State Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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