

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 173
Judiciary

(Delegate Kelly, *et al.*)

Crimes - Death Penalty - Murder of Off-Duty Law Enforcement Officer

This bill expands one of the aggravating circumstances that a jury must consider during a death penalty sentencing proceeding to include murdering a law enforcement officer while the officer was not on duty but in retaliation for the officer's actions while on duty.

Fiscal Summary

State Effect: It is expected that the Office of the Public Defender (OPD), the Offices of State's Attorneys, the Judiciary, and the Department of Public Safety and Correctional Services could meet the bill's requirements with existing resources.

Local Effect: The bill's requirements could be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: A person who commits murder in the first degree is guilty of a felony and is subject to a sentence of death, life imprisonment without the possibility of parole, or life imprisonment. Unless a death sentence or a sentence of life imprisonment without the possibility of parole is imposed, the sentence must be life imprisonment.

To be first degree murder, the murder must be:

- (1) a willful, deliberate, and premeditated killing;
- (2) committed by lying in wait;

- (3) committed by poison;
- (4) committed in the perpetration of, or attempt to perpetrate, arson in the first degree, in the burning or attempting to burn any barn, tobacco house, stable, warehouse, or other outbuilding; or
- (5) committed in the perpetration of, or attempt to perpetrate, a rape in any degree; first or second degree sexual offense; sodomy; mayhem; robbery; carjacking; armed carjacking; burglary in the first, second, or third degree; kidnapping; kidnapping a person under 16; escape in the first degree from a correctional facility; or the manufacture or possession of a destructive device.

A defendant found guilty of murder in the first degree may be sentenced to death only if the State gives the defendant 30 days' notice to seek a death sentence and each aggravating circumstance on which the State intends to rely. A defendant found guilty of murder in the first degree of a law enforcement officer may be sentenced to death only if the defendant: (1) was a principal in the first degree; or (2) was a principal in the second degree who willfully, deliberately, and with premeditation intended the death of the law enforcement officer, was a major participant, and was actually present at the time and place of the murder, and the death sentence is imposed as provided by law.

If the State gave the required notice, a separate sentencing proceeding must be held as soon as practicable after a defendant is found guilty of murder in the first degree to determine whether the defendant is to be sentenced to death. In determining whether a death sentence should be imposed, the court or jury must first consider whether any of the following aggravating circumstances existed beyond a reasonable doubt:

- one or more persons committed the murder of a law enforcement officer while the officer was on duty;
- the defendant committed the murder while confined in a correctional facility;
- the defendant committed murder in furtherance of an escape from, attempt to escape from, or an attempt to evade lawful arrest, custody, or detention by a correctional guard or officer, or a law enforcement officer;
- the victim was taken or attempted to be taken in the course of an abduction, kidnapping, or an attempt to abduct or kidnap;
- the victim was an abducted child, under the age of 12;
- the defendant committed murder under an agreement or contract for remuneration or the promise of remuneration to commit the murder;

- the defendant employed or engaged another to commit murder and the murder was committed under an agreement or contract for remuneration or promise of remuneration;
- the defendant committed murder while under a death sentence or imprisonment for life;
- the defendant committed more than one murder in the first degree arising out of the same incident; or
- the defendant committed murder while committing, or attempting to commit:
 - arson in the first degree;
 - carjacking or armed carjacking;
 - rape in the first degree;
 - robbery; or
 - sexual offense in the first degree.

If the court or jury does not find that one or more aggravating circumstances exist beyond a reasonable doubt, it shall state that conclusion in writing and a death sentence may not be imposed.

Background: In November 2002, three suspects were arrested for what was described as the execution-style murder of an off-duty detective who was ambushed in Baltimore. The detective had testified against a relative of one of the suspects. In April 2001, the relative had been convicted of shooting another officer in a similar ambush. In that case, the relative and another man were convicted of attempted second-degree murder and sentenced to 30 years in prison.

This bill provides that the murder of an officer while not on duty, but in retaliation for actions the officer took while on duty, would be an aggravating circumstance in consideration of a death penalty sentence.

State and Local Fiscal Effect: OPD advises that each new capital case is estimated to cost the office \$80,000. There is no available data to determine how many cases could be referred to OPD that meet the criteria of this bill. However, an expansion of aggravating factors does not, in and of itself, mandate that OPD will be undertaking any new capital cases. The addition of an aggravating circumstance may mean a marginal increase in the time required to prepare a death penalty case. However, the Department of Legislative Services advises that OPD can meet the bill's requirements with existing resources.

The bill's provisions could create a marginal increase in the number of cases that are considered "death penalty-eligible." However, State's Attorneys have wide discretion in choosing which cases will be submitted for death penalty notification. A recent study of

death penalty administration in Maryland, completed by the University of Maryland, reported that on a statewide basis, State's Attorneys file notification to seek the death penalty in about 27% of all eligible cases. In about 40% of the cases where notification is filed, that notification is later withdrawn. As a result, a death penalty notice is likely to be filed and retained in only about 16% of all cases that meet the legal requirements for "death penalty-eligible." An expansion of the factors that create a death penalty-eligible case does not necessarily, in and of itself, create an increase in death penalty cases, since the designation of a case as "capital" is dependent on other factors and subject to the discretion of the State's Attorney.

Additional Information

Prior Introductions: This bill is a reintroduction of HB 250 of the 2004 session. HB 250 was heard in the Judiciary Committee, but received no further action. Another prior introduction, HB 74 of the 2003 session, was heard in the Judiciary Committee, but received no further action.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, University of Maryland, Department of Legislative Services

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Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510