

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 493 (Delegate O'Donnell)
Judiciary

Sentencing - Death Penalty - Murder of Individual Under Protective Order

This bill specifies that in a death penalty case, for sentencing purposes, it is an aggravating circumstance for murder in the first degree if the victim was a person: (1) eligible for relief under an existing temporary *ex parte* order or a protective order to protect the victim from abuse; and (2) whom the defendant murdered in violation of that order. The bill also expands the definition of "defendant," providing that for a murder committed in violation of a protective order, a defendant is not limited to a principal in the first degree.

Fiscal Summary

State Effect: It is expected that the Office of the Public Defender, 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: None.

Small Business Effect: None.

Analysis

Current Law:

Aggravating Circumstances in Death Penalty

To be first degree murder, the murder must be:

- a willful, deliberate, and premeditated killing;
- committed by lying in wait;
- committed by poison;
- 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
- 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; the escape in the first degree from a correctional facility; or the manufacture or possession of a destructive device.

If the State seeks the death penalty and a defendant is found guilty of murder in the first degree, the court or jury, in determining the sentence, must first consider whether any of 10 statutory aggravating circumstances exist to impose a sentence of death. 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 specified mitigating circumstances exist. The court or jury then weighs whether the aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. If so, the death sentence is imposed. If not, the sentence is either life imprisonment or life imprisonment without parole.

With the exception of defendants who engage or employ another to commit a murder and persons committing the murder of a law enforcement officer while in the performance of the officer's duties, only principals in the first degree (*i.e.*, the person who actually committed the murder) are eligible for the death penalty.

Ex Parte Order and Protective Order

If a court finds that there are reasonable grounds to believe that a person eligible for relief has been abused, the court may enter a temporary *ex parte* order and order the respondent:

- to refrain from further abuse or threats of abuse;
- to refrain from contacting, attempting to contact, or harassing the person eligible for relief;
- to refrain from entering the residence of the person eligible for relief;

- to vacate the home immediately, where the person eligible for relief and the respondent are residing together;
- to remain away from the place of employment, school, or temporary residence of the person eligible for relief; and
- to remain away from a child care provider of a person eligible for relief.

The court may also award temporary custody of a minor child of the respondent and a person eligible for relief.

The temporary *ex parte* order is effective for up to 7 days and may be extended up to 30 days.

The protective order hearing must be held no later than seven days after the service of the temporary *ex parte* order. If the court finds by clear and convincing evidence that the alleged abuse has occurred, the court may grant a protective order.

All relief granted in the protective order is effective for the period stated in the order, not exceeding 12 months. A subsequent circuit court order pertaining to any of the provisions included in the protective order supersedes those provisions in the protective order.

Background: According to the 2003 *Uniform Crime Report*, 15 people were homicide victims as a result of domestic violence in calendar 2003. This does not include any incidents in Baltimore City, which did not report crime information to the State Police for that period. Information is not available on how many murders were perpetrated after the issuance of a temporary *ex parte* or final protective order.

The Administrative Office of the Courts reports that the District Court held 24,481 hearings for temporary orders and 14,729 hearings for final protective orders during fiscal 2004. The District Court granted 14,071 temporary orders and 7,395 final protective orders. In the circuit courts, a total of 4,306 domestic violence cases were filed or reopened during fiscal 2004.

State Fiscal and Local Effect: The Office of the Public Defender (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 1231 from the 2004 session. HB 1231 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, Office of the Attorney General, Department of Public Safety and Correctional Services, Department of Legislative Services

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