

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 398

(Delegate Boutin, *et al.*)

Judiciary

Judicial Proceedings

Murder and Manslaughter - Viable Fetus

This bill allows for the prosecution of murder or manslaughter of a viable fetus.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Office of Chief Medical Examiner (OCME). Potential minimal increase in general fund revenues and expenditures due to the expanded application of current law penalty provisions.

Local Effect: Potential minimal increase in local revenues and expenditures due to the expanded application of current law penalty provisions. Potential significant increase in expenditures for county medical examiners.

Small Business Effect: None.

Analysis

Bill Summary: A person prosecuted for murder or manslaughter as a result of this bill must have: (1) intended to cause the viable fetus' death; (2) intended to cause serious physical injury to the viable fetus; or (3) wantonly or recklessly disregarded the likelihood that the person's actions would cause the death of or serious physical injury to the viable fetus.

This does not apply to a woman's right to terminate a pregnancy. A physician or other licensed medical professional cannot be held liable for fetal death that occurs in the course of administering lawful medical care. The bill does not apply to an act or failure

to act of a pregnant woman with regard to her own fetus. The bill also must not be construed to confer personhood or any rights on the fetus.

The commission of first degree murder of a viable fetus, in conjunction with the commission of another first degree murder arising out of the same incident, does not constitute an aggravating circumstance subjecting a defendant to the death penalty.

Current Law: A murder that is not first degree murder is considered second degree murder. A violator is guilty of a felony and subject to imprisonment for up to 30 years.

Manslaughter is a common law offense. The meaning accorded to involuntary and voluntary manslaughter is judicially determined and based on case law. The distinction generally depends on whether there was an intention to kill. Manslaughter generally is a felony and distinct from murder by virtue of the absence of malice. Voluntary manslaughter is distinguished from murder by absence of malice aforethought, express or implied, and by having a reasonable provocation.

Manslaughter, except for involuntary manslaughter, is a crime of violence for purposes of sentencing and parole laws. The crime is a felony, with a maximum penalty of 10 years imprisonment in a State facility, or two years detention in a local facility and/or a \$500 fine.

“Unlawful homicide” includes murder, manslaughter, and homicide by motor vehicle or vessel.

If an abortion is provided, it must be performed by a licensed physician.

The State may not interfere with a woman’s decision to end a pregnancy before the fetus is viable or at any time during a woman’s pregnancy if the procedure is necessary to protect the life or health of the woman or the fetus is affected by a genetic defect or serious deformity or abnormality. A viable fetus is one that has a reasonable likelihood of surviving outside of the womb.

A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the physician’s best medical judgment following accepted standards of medical practice.

Background: According to the Department of Health and Mental Hygiene’s Office of Vital Statistics, there were 654 fetal deaths and 434 neonatal deaths in Maryland in 2001.

State Revenues: General fund revenues could increase minimally due to the expanded application of current law penalty provisions from cases heard in the District Court.

State Expenditures: According to OCME, this bill would require an examination (autopsy) on over 1,088 additional cases per year to find the cause and manner of death of viable fetuses. Accordingly, OCME believes that this bill would necessitate the hiring of nine additional staff, estimated at \$541,817 in fiscal 2006 and, allowing for annualization and inflation, growing to \$813,907 by fiscal 2010.

While the Department of Legislative Services (DLS) concurs that this bill has the potential to increase costs for OCME, DLS advises that the OCME cost estimates are unrealistically high. The actual number of additional examinations of a fetus by a medical examiner would be driven by a claim or suspicion of homicide and not by the number of such cases. Predicting the number of such claims or suspicions cannot be readily quantified, but are likely to be far less than the 1,088 cited by OCME. However, any significant increase in the number of autopsies by OCME could require at least one additional medical examiner at a cost (including fringe benefits and operating expenses) of over \$200,000 annually.

General fund expenditures could increase minimally as a result of the expanded application of current law penalty provisions due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

Local Revenues: Revenues could increase minimally due to the expanded application of current law penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

OCME advises that this bill potentially could result in a significant increase in expenditures for counties because county deputy medical examiners and forensic

investigators to investigate the death of every viable fetus and stillborn child across the State. OCME states that each case would then be referred to OCME for an autopsy.

DLS advises that predicting the number of such claims or suspicions cannot be readily quantified, but are likely to be far less than the 1,088 cited by OCME.

Additional Information

Prior Introductions: An identical bill, HB 520 of 2004, received an unfavorable report in the House Judiciary Committee.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2005
mam/jr Revised - House Third Reader - April 1, 2005

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