

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 306
Judiciary

(Delegate Smigiel, *et al.*)

Crimes - Death Penalty - Murder of a Child During a Sexual Offense

This bill alters the list of aggravating circumstances a court or jury must consider when making a decision to impose the death penalty to include whether the victim was a child murdered by the defendant while the defendant was committing or attempting to commit a sexual offense against the child.

Fiscal Summary

State Effect: Any increase in death penalty cases as a result of the bill can be handled with existing resources.

Local Effect: Any increase in death penalty cases as a result of the bill can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: Persons charged with first degree murder, if found guilty, are subject to penalties of life imprisonment, life imprisonment without parole, or death. Pursuant to Chapter 186 of 2009, the death penalty may only be imposed in cases in which the State presents the court or jury with (1) biological or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. A defendant is prohibited from being sentenced to death if the State relies solely on evidence provided by eyewitnesses in its case.

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 defendant who was younger than age 18 at the time of the murder may not be sentenced to death. A defendant who can prove by a preponderance of the evidence that he/she was mentally retarded¹ at the time of the murder is also exempt from the death penalty.

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 any of 10 aggravating circumstances exists beyond a reasonable doubt. The list of aggravating circumstances include whether the victim was a kidnapped child and whether the defendant committed the murder while committing or attempting to commit first degree rape or a sexual offense in the first degree.

If the presence of one or more aggravating circumstances is found, the court or jury must consider whether one or more of eight mitigating circumstances exist and whether the aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. If a court or jury finds the existence of aggravating circumstance and that they outweigh the mitigating circumstance, or no mitigating circumstance is found, a death sentence may be imposed. The Court of Appeals is required to review the death sentence on the record. Implementation of the death penalty must be carried out by the Division of Correction (DOC) in the Department of Public Safety and Correctional Services (DPSCS).

State Fiscal Effect: DPSCS advises that the bill will not have a fiscal impact on the department. The Office of the Public Defender (OPD) advises that while it does not foresee a significant increase in death penalty cases as a result of the bill, the addition of as few as two death penalty cases to OPD's caseload would necessitate the hiring of two additional assistant public defenders at an estimated cost of \$149,600 in fiscal 2011. However, the commission of or attempt to commit first degree rape or sexual offense are already aggravating circumstances under existing law. Since these are the most violent of the sexual offenses, it is likely that the murder of a child during a sexual offense would involve a first degree sexual offense. Child kidnapping, which is also an existing aggravating circumstance, may also be a factor in these cases. Given that most of the cases affected by this bill are already included under current law, it is unlikely that the bill will result in the need for OPD to hire additional personnel.

¹ The term "mentally retarded" is being used in this fiscal and policy note because that term has a specific legal meaning as developed by case law. Chapter 119 of 2009 replaced the term "mental retardation" with "intellectual disability" in the State code. However, the Act did not alter references to "mental retardation" in the Criminal Law Article.

Local Fiscal Effect: Given that most of the cases affected by this bill are already included under current law, it is unlikely that the bill will result in increased expenditures for State's Attorneys.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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