

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 457
Judiciary

(Delegate McDonough, *et al.*)

**Criminal Law - Death Penalty - Murder of Law Enforcement Officer,
Correctional Officer, First Responder, or Witness**

This bill reinstates the death penalty for (1) the first-degree murder of a “law enforcement officer” or a “correctional officer” while the officer was performing the officer’s duties; (2) the first-degree murder of an off-duty law enforcement officer or an off-duty correctional officer arising out of the victim’s employment as a law enforcement officer or correctional officer; (3) the first-degree murder of a “first responder” arising out of the victim’s employment as a first responder; and (4) the murder of a “witness” arising out of the victim’s role as a witness. The bill also makes corresponding changes to statute to reflect reinstatement of the death penalty in these cases.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for litigation-related expenses for the Office of the Public Defender (OPD) and the Office of the Attorney General (OAG). The bill is not expected to materially affect the finances of the Judiciary or the Department of Public Safety and Correctional Services (DPSCS).

Local Effect: Given the relatively few number of cases to which the bill applies, the bill is not expected to materially impact State’s Attorneys’ offices or local government finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines a “law enforcement officer” as an individual defined by the Law Enforcement Officers’ Bill of Rights under § 3-101 of the Public Safety Article. Under that statutory provision, “law enforcement officer” means an individual who (1) in an official capacity is authorized by law to make arrests and (2) is a member of one of a list of specified State and local law enforcement agencies. Individuals who meet specified criteria are excluded from the definition of “law enforcement officer” under § 3-101 of the Public Safety Article.

“Law enforcement officer” includes (1) a law enforcement officer of a jurisdiction outside the State; (2) an officer serving in a probationary status; (3) a parole and probation officer; and (4) a law enforcement officer while privately employed as a security officer or special police officer under Title 3, Subtitle 3 of the Public Safety Article if the law enforcement officer is wearing the uniform worn while acting in an official capacity or is displaying prominently the officer’s official badge or other insignia of office.

Under the bill, a “correctional officer,” as defined in § 8-201 of the Correctional Services Article, is a member of a correctional unit whose duties relate to the investigation, care, custody, control, or supervision of inmates and individuals who have (1) been placed on parole or mandatory supervision; (2) been placed on probation; or (3) received a suspended sentence. “Correctional officer” does not include (1) the head or deputy head of a correctional unit or (2) a sheriff, warden, or superintendent or an individual with an equivalent title who is appointed or employed by a unit of government to exercise equivalent supervisory authority.

A “first responder” is a firefighter, an emergency medical technician, or a rescue squad member.

A “witness” is a person who is or expects to be a witness for the State in a criminal trial.

Current Law/Background: A person convicted of first-degree murder may be punished by imprisonment for life, with or without the possibility of parole. Chapter 156 of 2013 repealed the death penalty in Maryland and made corresponding changes to applicable statutory provisions. In January 2015, Governor O’Malley commuted the sentences of the four remaining inmates on death row to life without the possibility of parole.

State Fiscal Effect: The bill is not expected to materially affect the finances of the Judiciary or DPSCS. The bill results in a minimal increase in litigation-related expenditures for OPD and OAG.

The Judiciary advises that the fiscal impact of the bill cannot be measured with any certainty because it is unknown how many cases will be eligible for the death penalty under the bill. However, given the restrictions on eligibility for the death penalty under the bill with respect to the identity of the victim and required evidence, the Department of Legislative Services (DLS) advises that the bill is not expected to significantly change the Judiciary caseloads.

The Department of State Police advises that the bill does not affect the department's operational funds.

OPD advises that the cost to litigate capital cases is \$1.9 million, compared to \$650,000 to litigate those same cases as noncapital cases. However, DLS advises that litigation-related expenditures for OPD increase minimally as result of the bill given (1) the relatively few number of cases to which the bill's provisions apply and (2) the maintenance of OPD personnel and funding after the death penalty repeal.

According to information provided by OPD to DLS in 2013, the figures cited above represent the annual cost of litigating capital cases compared to the annual cost after the repeal of the death penalty. The bill reinstates the death penalty for a *subset* of cases, not *all* of the first-degree murder cases that were previously eligible for the death penalty. Also, the bill reestablishes restrictions on the eligibility first enacted in 2009 by specifying that these cases are only eligible for the death penalty if 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 may not be sentenced to death if the State relies solely on evidence provided by eyewitnesses in the case. Given both of these factors, OPD may not receive a death penalty case every year under the bill.

Following changes to the death penalty statute during the 2009 legislative session, OPD's Capital Defense Division was disbanded as a separate program in fiscal 2010 and renamed the Aggravated Homicide Division (AHD). AHD is under the umbrella of OPD District Operations. At that time, AHD provided (1) direct trial representation to clients who faced the death penalty and (2) instruction and support to all OPD attorneys statewide who represented persons charged with capital offenses. AHD also provided training, consultation, and resources to provide litigation support in all areas of representation. Following the repeal of the death penalty in 2013, OPD did not eliminate personnel; AHD personnel were absorbed into other functions and continue to litigate high-level homicide cases. Also, OPD funding for high-level murder cases was not reduced following the death penalty repeal.

OPD advises that it typically hired mental health experts, mitigation experts, and/or social workers for death penalty cases. Following the repeal of the death penalty, OPD has only hired mental health experts for life without the possibility of parole cases. To the extent that OPD needs to hire additional experts for capital cases, general fund expenditures for OPD may increase in future years.

DPSCS advises that the cost to maintain a death row inmate at North Branch Correctional Institution (NBCI) is comparable to the cost of maintaining a maximum security inmate at NBCI.

OAG represents the State in appeals in capital cases. Given the relatively few cases to which the bill applies, general fund expenditures for OAG for litigation-related expenses increase minimally as a result of the bill.

Local Fiscal Effect: Given the relatively few number of cases to which the bill applies, the bill is not expected to materially impact State's Attorneys' offices or local government finances.

Carroll and Harford counties do not foresee a fiscal impact from the bill.

Baltimore County advises that prior to repeal of the death penalty, its State's Attorney's office budgeted between \$5,000 and \$10,000 annually for expenses related to housing prosecutors and transporting witnesses for death penalty cases for which the venue was changed. Those expenditures have been eliminated following the repeal of the death penalty, but may be incurred again should the death penalty be reinstated under the bill.

Additional Information

Prior Introductions: HB 235 of 2014, a similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, and Queen Anne's counties; Maryland State Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; WTOP.com; Department of Legislative Services

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