

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 157

(Senator Cassilly)

Judicial Proceedings

Criminal Procedure - Life Without Parole - Repeal of Sentencing Proceeding

This bill repeals the separate jury sentencing proceeding for first-degree murder cases in which the State seeks a sentence of life imprisonment without the possibility of parole and corresponding statutory provisions.

The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any crime committed before the bill's October 1, 2016 effective date.

Fiscal Summary

State Effect: Minimal decrease in general fund expenditures for juror per diem costs. Revenues are not affected.

Local Effect: Minimal decrease in local expenditures for juror per diem costs. The bill is not expected to materially affect circuit court caseloads or operations.

Small Business Effect: None.

Analysis

Current Law: A defendant convicted of murder in the first degree may be sentenced to life imprisonment without the possibility of parole only if the State gives written notice to the defendant at least 30 days before trial of its intention to seek a sentence of imprisonment for life without the possibility of parole.

If the State gives this notice, the court must conduct a separate sentencing proceeding as soon as practicable after the defendant is found guilty of murder in the first degree to determine whether the defendant must be sentenced to life imprisonment or life

imprisonment without the possibility of parole. A determination by a jury to impose a sentence of life imprisonment without the possibility of parole must be unanimous, and the court must sentence the defendant to life without the possibility of parole if the jury makes this determination. The court must impose a sentence of life imprisonment if the jury is unable to unanimously agree to the imposition of a sentence of life imprisonment without the possibility of parole within a reasonable time. A defendant who was convicted after a bench trial is also entitled to this separate jury sentencing proceeding.

The Court of Appeals may adopt rules of procedure to govern the conduct of these sentencing proceedings and forms for a court or jury to use in making written findings and sentence determinations.

Background: Prior to the repeal of the death penalty by Chapter 156 of 2013, if the State gave notice of its intention to pursue a sentence of life imprisonment without the possibility of parole but *did not* give notice of its intention to seek the death penalty, a defendant was entitled to the separate jury sentencing proceeding affected by the bill.

In death penalty cases, an extensive, separate jury sentencing proceeding (unless waived by the defendant) occurred after a defendant was found guilty of first-degree murder to determine whether or not to impose a death sentence. If the State gave notice of its intention to seek the death penalty *and* life imprisonment without the possibility of parole but the court or jury determined that the death sentence may not be imposed, then the court or jury was required to determine (without a second separate jury sentencing proceeding) whether the defendant should be sentenced to life imprisonment or life imprisonment without the possibility of parole.

State Fiscal Effect: The State reimburses counties for juror per diem costs at a rate of \$15 per juror per day for the first five days and then \$50 per day for each day served thereafter. According to the Judiciary, from fiscal 2010 through 2014, there were an average of 67 sentencing hearings per year for defendants facing a sentence of life imprisonment without the possibility of parole. Assuming that each hearing requires one day of work for a 12-person jury, the State may save approximately \$12,060 per year in juror per diem reimbursements to counties.

To the extent that it is more likely that a defendant receives a sentence of life imprisonment without the possibility of parole from a sentencing judge as opposed to a unanimous decision by a jury, then long-term general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) may increase. However, any such increase in DPSCS expenditures is not incurred until well into the future.

Offenders sentenced to life imprisonment for first-degree murder, instead of a sentence of life imprisonment without the possibility of parole, must serve a minimum of 25 years less

diminution credits before becoming eligible for parole and may generally be paroled only with approval of the Governor. However, pursuant to legislation enacted in 2011, if the Maryland Parole Commission or the Patuxent Board of Review decides to grant parole to an inmate who has served 25 years *without* application of diminution credits and the Secretary of Public Safety and Correctional Services approves the decision, the decision must be transmitted to the Governor, who may disapprove the decision in writing within 180 days. If the Governor does not disapprove the decision to grant parole within that timeframe, the decision to grant parole becomes effective.

Inmates serving a sentence of life without the possibility of parole may not be granted parole unless the Governor commutes the sentence to allow for the possibility of parole or pardons the individual.

Local Fiscal Effect: Local expenditures for juror per diem costs decrease minimally as a result of the bill's repeal of separate jury sentencing hearings in first-degree murder cases. As previously mentioned, the State reimburses counties for juror per diem costs at a rate of \$15 per juror per day for the first five days of service and \$50 per juror per day for each day thereafter. Counties are authorized to supplement this amount. According to the Judiciary, juror reimbursement rates for the first five days of service range from \$15 to \$30 per day, depending on the jurisdiction.

The bill may reduce the workloads of prosecutors. However, it is assumed that any reduction in workloads resulting from the bill is redirected to other responsibilities of State's Attorneys and does not result in staffing reductions. The State's Attorneys' Association advises that the effect of the bill on prosecutors is unknown at this time.

Additional Information

Prior Introductions: SB 849 of 2015 received a favorable report from the Senate Judicial Proceedings Committee. The Senate adopted the committee's favorable report, but the bill was later recommitted back to the committee. HB 1135 of 2015 was referred to the House Rules and Executive Nominations Committee, but no further action was taken on the bill.

Cross File: None designated; however, HB 95 (Delegate B. Wilson – Judiciary) is identical.

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

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