

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1187

(Senator Cassilly, *et al.*)

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, 2017 effective date.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances, as discussed below.

Local Effect: The bill is not expected to materially affect local finances, as discussed below.

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 the death penalty, 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.

If the State only gave notice of its intent to seek life imprisonment without the possibility of parole but *did not* give notice of its intent to seek the death penalty, the court (not a jury) was required to conduct a separate sentencing proceeding as soon as practicable after the defendant was found guilty to determine if the defendant should be sentenced to life imprisonment or life imprisonment without the possibility of parole.

In *Bellard v. State*, 229 Md.App. 312 (2016), the Maryland Court of Special Appeals held that the Circuit Court for Prince George's County did not err when it failed to strike the State's notice to seek life imprisonment without the possibility of parole and when the court, not a jury, sentenced Mr. Bellard to four consecutive sentences of life imprisonment without the possibility of parole for four counts of first-degree murder. In reaching its decision, the Court of Special Appeals determined that while the provisions of § 2-304 of the Criminal Law Article that remained in statute after the death penalty repeal (particularly the references to two different potential sentencing bodies) create some ambiguity regarding sentencing procedures for a defendant convicted of first-degree murder who is facing a potential sentence of life imprisonment without the possibility of parole, based on the legislative history of Chapter 156, it is clear that the legislature intended for Chapter 156 to repeal the death penalty and not alter the sentencing procedures in murder cases no longer subject to the death penalty.

On December 2, 2016, the Maryland Court of Appeals granted *certiorari* in the case to consider (1) whether § 2-304 of the Criminal Law Article gives criminal defendants the right to have a jury determine whether they should be sentenced to life imprisonment without the possibility of parole and (2) the constitutionality of Maryland's sentencing scheme for life imprisonment without the possibility of parole. The Court of Appeals heard oral arguments in the case on March 6, 2017.

State Fiscal Effect: Assuming that following the decision of the Maryland Court of Special Appeals in the *Bellard* case, courts are not conducting separate jury sentencing proceedings in first-degree murder cases in which a sentence of life imprisonment without the possibility of parole is possible, the bill clarifies current procedures and is not expected to materially affect State finances.

This estimate does not account for a future decision by the Court of Appeals in the *Bellard* case that a defendant convicted of first-degree murder who is facing a sentence of life imprisonment without the possibility of parole is entitled to a separate jury sentencing proceeding to determine whether that sentence should be imposed.

Local Fiscal Effect: For the reasons stated above, the bill clarifies current procedures and is not expected to materially affect local finances. However, should the bill reverse a future decision by the Court of Appeals in the *Bellard* case, then local expenditures for supplemental juror per diem reimbursements decrease minimally.

Additional Information

Prior Introductions: SB 157 of 2016 received a hearing in the Senate Judicial Proceedings Committee, but was later withdrawn. HB 95 of 2016 received a hearing in the House Judiciary Committee, but was later withdrawn. 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 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.

Information Source(s): Montgomery County; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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