

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 757 (Delegate Kittleman, *et al.*)  
Health and Government Operations

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Criminal Law - Homicide - Fetus

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This bill repeals references to the terms “viable” in the statutory provisions concerning the offense of murder or manslaughter of a fetus. Under the bill, an individual may be prosecuted for the murder or manslaughter of a “fetus,” defined as an unborn offspring of the species *Homo sapiens* from the end of the eighth week after fertilization until birth. The bill retains all other provisions of the existing statute, but also requires that a person prosecuted for this offense must have known or reasonably should have known that the mother of the fetus was pregnant at the time of the offense. A prosecution for the murder or manslaughter of a fetus may not be construed to (1) prohibit the prosecution of any person under any other provision of law or (2) preclude any civil cause of action.

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Fiscal Summary

**State Effect:** Minimal increase in general fund expenditures due to the bill’s expanded application of existing incarceration penalties. Revenues are not affected.

**Local Effect:** The bill does not materially affect local finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** With certain exceptions, a person may be prosecuted for the murder or manslaughter of a viable fetus. “Viable” is defined as the stage when, in the best medical judgment of the attending physician based on the particular facts of the case before the physician, there is a reasonable likelihood of the fetus’s sustained survival outside the womb.

To be prosecuted for murder or manslaughter of a fetus, a person must have (1) intended to cause the death of the viable fetus; (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.

These statutory provisions do not (1) apply to or infringe on a woman's right to terminate a pregnancy under the Health-General Article; (2) subject a physician or other licensed medical professional to liability for fetal death that occurs in the course of administering lawful medical care; (3) apply to an act or failure to act of a pregnant woman with regard to her own fetus; or (4) confer personhood or any rights on the fetus.

First-degree murder is punishable by imprisonment for life, with or without the possibility of parole. Murder that is not in the first degree is considered second-degree murder. Violators are subject to a maximum penalty of imprisonment for 40 years.

Manslaughter is a common law offense. The meanings accorded to involuntary and voluntary manslaughter are judicially determined and based on case law. Manslaughter is distinguished from murder by the absence of malice aforethought, express or implied. The absence of intention to kill or to commit any unlawful act which might reasonably produce death or great bodily harm is generally the distinguishing factor between voluntary and involuntary manslaughter. A person who commits manslaughter is guilty of a felony and subject to maximum penalties of (1) imprisonment for 10 years or (2) imprisonment in a local correctional facility for 2 years and/or a fine of \$500.

**Background:** According to the National Conference of State Legislatures, as of May 1, 2018, at least 38 states have fetal homicide laws. Approximately 29 of these states have fetal homicide laws that pertain to the earliest stages of pregnancy ("any state of gestation/development," "conception," "fertilization," or "post-fertilization"). The debate over these laws often includes components of the debate over reproductive rights.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's expanded application of current incarceration penalties due to more people being committed to State correctional facilities. The number of people convicted as a result of the bill is expected to be minimal. Furthermore, individuals who face penalties as a result of the bill likely face other serious charges that carry significant penalties under existing statute.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term

of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

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### **Additional Information**

**Prior Introductions:** SB 533 of 2018, a similar bill, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill. Its cross file, HB 748, received a hearing in the House Judiciary Committee. No further action was taken on the bill.

**Cross File:** SB 561 (Senator Ready, *et al.*) - Judicial Proceedings.

**Information Source(s):** Baltimore, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Maryland Association of Counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; National Conference of State Legislatures; Department of Legislative Services

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