

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 951 (Senators Benson and Hettleman)
 Judicial Proceedings

Criminal Law - Felony First-Degree Murder - Limitation and Resentencing
 Procedure

This bill alters the classification of felony murder by (1) repealing the felony murder provision currently contained in the prohibition on murder in the first degree and (2) reclassifying those same acts as second-degree murder. The bill authorizes a person who was convicted of first-degree murder under the first-degree felony murder provision prior to September 30, 2020, to apply for resentencing under specified circumstances.

Fiscal Summary

State Effect: General fund expenditures for the Office of the Public Defender (OPD) increase by \$165,000 in FY 2021 and by \$183,900 in FY 2022. Potential increase in general fund expenditures for the Judiciary (not reflected below). Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	165,000	183,900	0	0	0
Net Effect	(\$165,000)	(\$183,900)	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Increased workloads for State’s Attorneys. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Notwithstanding any other provision of law, a person who was convicted on or before September 30, 2020, of first-degree murder under the felony murder provision currently contained in § 2-201(a)(4) of the Criminal Law Article may file a petition for resentencing in accordance with the bill.

After an individual files a petition for review, the court may vacate the conviction and sentence for first-degree murder and enter a conviction and sentence for murder in the second degree. The court may not increase the sentence of the petitioner.

Current Law: A murder is in the first degree if it is (1) a deliberate, premeditated, and willful killing; (2) committed by lying in wait; (3) committed by poison; or (4) committed in the perpetration of or an attempt to perpetrate specified offenses, including among others, first-degree arson; first-, second-, and third-degree burglary; kidnapping; carjacking; rape; or mayhem. A violator is guilty of a felony and on conviction must be sentenced to imprisonment for life, with or without the possibility of parole. A sentence of imprisonment for life without the possibility of parole may not be imposed unless specified statutory and procedural requirements are met.

A murder is in the second degree if it is not murder in the first degree. A violator is guilty of a felony, and on conviction is subject to imprisonment up to 40 years.

Under the common law theory of felony murder, a homicide arising in the perpetration of, or in the attempt to perpetrate, a felony is murder whether death was intended or not. Under this theory, the commission of or attempt to commit the underlying felony is sufficient to supply the element of malice required for a charge of murder.

Background: According to the Judiciary, there were 1,076 convictions for murder in the first degree during fiscal 2011 through 2019, as shown in **Exhibit 1**. The Judiciary advises that these numbers include *all* reported convictions for murder in the first degree, since it is currently impossible to distinguish felony-murder convictions as separate and distinct from other convictions for murder.

Exhibit 1
Murder in the First Degree (§ 2-201 of the Criminal Law Article) Convictions
Fiscal 2011-2019

<u>Fiscal Year</u>	<u>Guilty Convictions</u>
2011	101
2012	112
2013	108
2014	101
2015	130
2016	151
2017	128
2018	121
2019	124
Total	1,076

Source: Maryland Judiciary

State Expenditures: General fund expenditures for OPD increase by \$164,983 in fiscal 2021 and by \$183,937 in fiscal 2022. General fund expenditures for the Judiciary may also increase.

Office of the Public Defender

General fund expenditures for OPD increase by \$164,983 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring three contractual attorneys to assist existing OPD personnel in case file review, preparation of petitions, and additional petition-related functions. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- a significant percentage of those currently incarcerated for first-degree murder will petition for resentencing under the bill;
- the court is not required to hold a hearing after receiving a petition under the bill; and

- absent further litigation on the merits of each case, a substantial portion of OPD’s involvement in a case will be limited to the review of the record included in the case file and preparation of written materials for the court.

Contractual Positions	3.0
Salaries and Fringe Benefits	\$148,884
Operating Expenses	<u>16,099</u>
Total FY 2021 OPD Expenditures	\$164,983

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses through fiscal 2022. It is assumed that the need for additional personnel terminates on June 30, 2022, reflecting the likelihood that most cases will have been reviewed by then and/or can be handled with existing personnel.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Judiciary

The bill may also increase the Judiciary’s expenditures. The Judiciary advises that the bill (1) may have a significant impact on resources, especially if several applications are filed in a short amount of time and (2) may result in the need to utilize senior judges to address the temporary increase in judicial workload. As previously noted, data on the number of individuals convicted of first-degree murder under the felony murder provision cannot be reliably determined without a review of individual case files. Thus, the Judiciary is unable to determine the precise impact of the bill on judicial workloads at this time.

Department of Public Safety and Correctional Services

This estimate does not address any potential reduction in incarceration expenditures for the Department of Public Safety and Correctional Services (DPSCS) resulting from the bill. The bill results in decreased incarceration expenditures to the extent that (1) the bill decreases the number of individuals serving sentences for first-degree murder in the future and (2) individuals experience a reduction in incarceration time in response to a petition for resentencing filed under the bill. Any reduction in incarceration expenditures depends on the number of individuals to whom the bill applies, judicial actions on petitions filed under the bill, and sentences for other offenses being served by individuals affected by the bill, all of which can only be determined with actual experience under the bill.

DPSCS advises that it requires additional correctional officers to transport inmates and one commitment records specialist, at an expense of approximately \$146,616 in

fiscal 2021. However, given the temporary nature of resentencing under the bill, the lack of information as to prospective information on judicial actions in response to petitions, the lack of a clear requirement in the bill regarding the need for a hearing on a petition under the bill, and the lack of information regarding the ability of existing personnel to absorb additional workloads under the bill, the Department of Legislative Services advises that the need for additional DPSCS personnel is speculative.

Local Expenditures: Workloads for State’s Attorneys’ offices increase, especially in jurisdictions with a high volume of first-degree murder cases.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 9, 2020
af/aad

Analysis by: Donavan A. Ham

Direct Inquiries to:
(410) 946-5510
(301) 970-5510