

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 87 (Delegate Mangione)
 Judiciary

Criminal Law - Death Penalty

This bill (1) reinstates the death penalty for first-degree murder cases meeting specified criteria; (2) makes corresponding changes in State law to reflect reinstatement of the death penalty; (3) establishes procedural requirements in these cases; and (4) requires that, if a defendant is sentenced to death, the court before which the defendant is tried and convicted must sentence the defendant to death by intravenous administration of a lethal quantity of an ultrashort-acting barbiturate or other similar drug in combination with a chemical paralytic agent.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$1.2 million in FY 2025 for affected agencies to implement the bill and litigate death penalty cases, as discussed below. Future years reflect annualization, inflation, and elimination of one-time costs. Revenues are not affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,254,300	416,600	435,000	454,100	474,000
Net Effect	(\$1,254,300)	(\$416,600)	(\$435,000)	(\$454,100)	(\$474,000)

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

Local Effect: Litigation expenditures for State’s Attorneys’ offices and local governments may increase, depending on case volume and existing resources. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

General Requirements for Imposing a Death Sentence

A defendant found guilty of first-degree murder may only be sentenced to death (1) if, at least 30 days before trial, the State gave written notice to the defendant of its intention to seek a death sentence and each aggravating circumstance on which the State intends to rely; (2) with respect to provisions in the bill pertaining to aggravating circumstances, the defendant was a principal in the first degree, except as otherwise specified; and (3) the sentence of death is imposed in accordance with specified requirements.

If the State gave notice of its intention to seek a sentence of death in accordance with the bill's requirements, a separate sentencing proceeding must be held as soon as practicable after a defendant is found guilty of first-degree murder to determine if the defendant must be sentenced to death. This sentencing proceeding must be conducted (1) before the jury that determined the defendant's guilt; (2) before a jury impaneled for this purpose if the defendant was convicted based on a guilty plea, convicted after a bench trial, because the court discharged the jury that convicted the defendant for good cause, or because a court of competent jurisdiction remanded the case for resentencing following a review of the original sentence of death; or (3) if the defendant waives a jury sentencing proceeding before the court. The bill also specifies the type of evidence admissible in a sentencing proceeding.

Aggravating and Mitigating Circumstances

In determining a sentence, the court or jury must consider whether any of the following aggravating circumstances exists beyond a reasonable doubt:

- one or more persons committed the murder of a law enforcement officer while the officer was performing the officer's duties;
- the defendant committed the murder while confined in a correctional facility;
- the defendant committed the murder in furtherance of an escape from, or an attempt to evade lawful arrest, custody, or detention by a law enforcement officer or a guard or officer of a correctional facility;
- the victim was taken or attempted to be taken in the course of an abduction, a kidnapping, or an attempt to abduct or kidnap;
- the victim was a child abducted in violation of § 3-503(a)(1) of the Criminal Law Article;

- the defendant committed the murder under an agreement or contract for remuneration or promise of remuneration to commit the murder;
- the defendant employed or engaged another to commit the murder and the murder was committed under an agreement or contract for remuneration or promise of remuneration;
- the defendant committed the murder while under a sentence of death or imprisonment for life;
- the defendant committed more than one murder in the first degree arising out of the same incident; or
- the defendant committed the murder while committing or attempting to commit (1) arson in the first degree; (2) carjacking or armed carjacking; (3) rape; or (4) robbery under § 3-402 or § 3-403 of the Criminal Law Article.

If the court or jury does not find that one or more of these aggravating circumstances exists beyond a reasonable doubt, it must state that conclusion in writing and a death sentence may not be imposed. However, if the court or jury does find that one or more of these aggravating circumstances exists beyond a reasonable doubt, it must then consider whether any of the following mitigating circumstances exists based on a preponderance of the evidence:

- the defendant has not been previously found guilty of a “crime of violence” (as defined in the bill), entered a guilty plea or a plea of *nolo contendere* to a crime of violence, or received probation before judgment for a crime of violence;
- the victim was a participant in the conduct of the defendant or consented to the act that caused the victim’s death;
- the defendant acted under substantial duress, domination, or provocation of another, but not so substantial as to constitute a complete defense to the prosecution;
- the murder was committed while the capacity of the defendant to appreciate the criminality of the defendant’s conduct or to conform that conduct to the requirements of law was substantially impaired due to emotional disturbance, mental disorder, or mental incapacity;
- the defendant was of a youthful age at the time of the murder;
- the act of the defendant was not the sole proximate cause of the victim’s death;
- it is unlikely that the defendant will engage in further criminal activity that would be a continuing threat to society; or
- any other fact that the court or jury specifically sets forth in writing as a mitigating circumstance in the case.

If the court or jury finds that one or more mitigating factors exists, it must determine by a preponderance of the evidence whether the aggravating circumstances outweigh the

mitigating circumstances. If the aggravating circumstances do not outweigh the mitigating circumstances, a death sentence may not be imposed. A death sentence must be imposed if the court or jury finds that the aggravating circumstances outweigh the mitigating circumstances. If the decision is by a jury, the decision to impose the death penalty must be unanimous. The court must impose a death sentence if a jury decides that a death sentence must be imposed.

If the jury cannot come to an agreement within a reasonable amount of time, the court may not impose a death sentence. If the sentencing proceeding is conducted before a court without a jury, the court must determine whether a death sentence must be imposed, in accordance with the bill's requirements. If the court or jury determines that a death sentence may not be imposed and the State gave notice of intention to seek a sentence of life imprisonment without the possibility of parole, a determination must be made concerning life imprisonment without the possibility of parole. If the court or jury determines that a death sentence may not be imposed, and the State did not give notice of intention to seek a sentence of life imprisonment without the possibility of parole, the court must impose a sentence of life imprisonment.

If the State gave notice of its intention to seek a sentence of life imprisonment without the possibility of parole but did not give notice of its intention to seek the death penalty, the court must conduct a separate sentencing proceeding as soon as practicable to determine whether the defendant must be sentenced to imprisonment for life without the possibility of parole or to imprisonment for life.

If the State gave notice of its intention to seek the death penalty and its intention to seek a sentence of life imprisonment without the possibility of parole, but the court or jury determines that the death sentence may not be imposed, the court or jury must determine whether the defendant must be sentenced to imprisonment for life without the possibility of parole or imprisonment for life.

Current Law: A person convicted of first-degree murder must 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.

State Expenditures: General fund expenditures increase by at least \$1.2 million in fiscal 2025, including at least \$907,000 in fiscal 2025 only for the Department of Public Safety and Correctional Services (DPSCS) to purchase equipment and furnishings to create an operational death chamber at North Branch Correctional Institution (NBCI) and \$347,389 for additional personnel at the Office of the Public Defender (OPD) and the Office of the Attorney General (OAG).

Department of Public Safety and Correctional Services

DPSCS advises that it does not currently have an operational death chamber space. DPSCS estimates that the cost of establishing an operational death chamber at NBCI, which will include the installation of necessary equipment and furnishings, is \$907,000. This estimate, DPSCS notes, does not include any costs associated with the special storage of the drugs needed to carry out the lethal injection of an incarcerated individual sentenced to death, nor does it include the costs associated with updating the department's death penalty protocols.

DPSCS has previously advised that the cost to maintain an incarcerated individual on death row at NBCI is comparable to the cost of maintaining a maximum-security incarcerated individual at NBCI. Assuming this still applies, DPSCS expenditures related to housing incarcerated individuals are not expected to be materially affected under the bill, particularly given Maryland's experience with death penalty cases. Prior to repeal of the death penalty in 2013, there were five incarcerated individuals on Maryland's death row. According to a 2013 report by the Death Penalty Information Center, Maryland had the seventh smallest death row population in the nation. The most recent execution in the State had been in December 2005, in part due to deliberations over lethal injection protocols.

Office of the Public Defender

According to OPD, the reinstatement of the death penalty will increase its costs significantly and require the hiring of additional personnel. OPD estimates that the bill necessitates the hiring of five senior circuit attorneys; four specialized attorneys; one paralegal; one social worker; and three secretaries, with costs ranging from \$1,125,936 in fiscal 2025 to \$1,527,938 in fiscal 2029. Additional litigation-related expenses, which OPD cannot reliably estimate at this time, are also incurred.

OPD advises that, based on a 2008 report issued by the Urban Institute Justice Policy Center, a capital case resulting in a death sentence in Maryland costs approximately \$3 million. According to OPD, that amount was \$1.9 million more than a case in which the death penalty was not sought; today, factoring in inflation over the past 15 years, OPD estimates that the difference in costs between a capital case resulting in a death sentence and a case resulting in imprisonment for life would be \$2.7 million. Putting aside OPD's inflation-adjusted estimate, the original \$3 million figure cited includes \$1.3 million in prison costs, which are not the responsibility of OPD. While the office contends that a death penalty case costs \$1.7 million to litigate, the office did not provide a breakdown of these costs, including information on what portion of these costs is attributable to salaries for existing personnel and fixed costs that the office will incur regardless of whether it is litigating any death penalty cases.

The Department of Legislative Services (DLS) disagrees with the magnitude of OPD’s estimate given (1) the relatively small number of death penalty cases that the bill is likely to occasion and (2) the maintenance of OPD personnel before and after the death penalty repeal.

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. AHD has been renamed as the Major Crimes and Complex Litigation Division and provides direct representation in homicides and other complex criminal litigation cases.

However, DLS acknowledges that OPD will likely require an initial complement of personnel to address cases that may arise if the death penalty is reinstated almost 10 years after it was repealed. Therefore, general fund expenditures increase by \$245,852 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring one senior circuit attorney, one specialized attorney, and one paralegal to assist with death penalty cases. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$224,084
Operating Expenses	21,768
FY 2025 OPD Expenditures	\$245,852

Should OPD eventually require personnel and litigation-related resources beyond those listed above, OPD can request additional resources through the annual budget process.

Office of the Attorney General

OAG represents the State in appeals of capital cases. According to OAG, current staff cannot accommodate capital casework, and implementation of the bill requires an additional 2 assistant Attorneys General. OAG previously advised that, in 2006, the office’s death penalty staff was reduced to 1.5 attorneys and was further reduced to 1 attorney shortly thereafter. The former staff was assigned to Criminal Appeals Division work as a result of reduced death penalty-related litigation. Given the relatively few cases to which the bill is likely to apply, DLS does not concur with OAG’s assessment of the need for

staffing at a level in excess of staffing levels that existed prior to the repeal of the death penalty.

However, staffing at the level immediately before the repeal is likely necessary. Therefore, general fund expenditures increase by \$101,437 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. This estimate reflects the cost of hiring one assistant Attorney General. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$94,181
Operating Expenses	7,256
FY 2025 OAG Expenditures	\$101,437

Judiciary

According to the Judiciary, the reinstatement of the death penalty may result in increased litigation and could have a significant impact on its operations and finances. DLS disagrees and notes that as a percentage of the Judiciary's overall caseload, death penalty cases would not even constitute a miniscule fraction of the cases heard in the District Court. Moreover, DLS notes that for previous bills introduced in the Maryland General Assembly seeking to reestablish the death penalty, the Judiciary has advised that the reinstatement of the death penalty would have no material impact on its finances or operations. Therefore, DLS advises that any increased workload on the Judiciary occasioned by the bill can be absorbed with existing budgeted resources.

Local Expenditures: Local expenditures may increase to litigate death penalty cases. However, any such increase is dependent on case volume and existing resources, which varies by jurisdiction. The Maryland State's Attorneys' Association advises that the bill has no effect on prosecutors. Baltimore, Carroll, Harford, and Queen Anne's counties each advise that the bill has no anticipated impact on their operations.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Cross File: None.

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

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