

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE

House Bill 815 (Delegate O'Donnell. *et al.*)

Judiciary

Sentencing - Death Penalty - Murder in Violation of Protective Order

This bill provides an additional aggravating circumstance that must be considered in determining a sentence of death. Specifically, the bill adds whether the defendant murdered the victim in violation of an existing *ex parte* or protective order.

Fiscal Summary

State Effect: Potential general fund expenditure increase. Revenues would not be affected.

Local Effect: Potential minimal expenditure increase. Revenues would not be affected.

Small Business Effect: None.

Analysis

Current Law: Persons charged with first degree murder, if found guilty, are subject to penalties of life imprisonment, life imprisonment without parole, or death. Decisions to seek the death penalty are made by local State's Attorneys, who exercise discretion and have latitude in bringing such cases. The State is required to provide a person charged with first degree murder with written notice of an intention to seek the death penalty at least 30 days prior to trial.

A separate sentencing proceeding is required to be conducted as soon as practicable after completion of a trial to determine whether the death penalty will be imposed. A court or jury in considering the imposition of the death penalty must first consider whether, beyond a reasonable doubt, any of ten aggravating circumstances exist. Whenever the death penalty is imposed, and the judgment becomes final, the Court of Appeals is required to review the

sentence on the record. Administration of the death penalty is required to be carried out by the Division of Correction (DOC).

State Effect: There are several inherent difficulties in determining the effect of a particular aggravating circumstance. For instance, there is the potential overlap with other aggravating circumstances. In addition, prosecutors exercise discretion and have latitude in bringing such cases. There are also contrasts and dissimilarities as to how different courts and/or juries will view the same presentation of facts with particular sets of circumstances.

Since July 1, 1978, there have been 51 persons sentenced to death in Maryland (representing the imposition of 77 death sentences). Inmates sentenced to death are housed at the Maryland Correctional Adjustment Center (MCAC) at a cost of approximately \$4,000 per month. The average monthly cost for inmates otherwise incarcerated by the DOC is estimated at \$1,700. There are currently 16 persons under sentence of death and 15 are held at MCAC (1 person is in federal custody). The length of stay for inmates at MCAC is anticipated to be six to 11 years.

The DOC reports that 121 offenders were convicted of first degree murder in fiscal 1999. One person was sentenced to death. The division does not currently know how many of the 121 offenders committed were persons who would fall under the provisions of this bill. It is assumed that the number of such instances would be small. However, to the extent that this bill actually increases the number of death penalties imposed, the State would realize an indeterminate savings in incarceration costs over time.

The extent to which this additional aggravating circumstance would increase death penalty litigation is unclear. Accordingly, while it is conceivable that this bill could increase the workload and expenditures of the judicial system, including the Office of the Public Defender, any such increase cannot be reliably projected or quantified. In any event, the cost for the Public Defender to defend any additional death penalty cases arising from this bill is estimated to be \$75,000 per case, including the fees and costs associated with utilizing outside (panel) attorneys.

Local Effect: The creation of any additional aggravating circumstance could conceivably increase costs for State's Attorneys, but only to the extent that the new provision actually realizes additional death penalty activity by a particular State's Attorney. It is assumed the number of such instances would be small statewide.

Additional Information

Prior Introductions: Similar bills were introduced during the 1998 and 1999 sessions. In 1998, HB 558 was withdrawn and SB 19 received an unfavorable report from the Senate Judicial Proceedings Committee. In 1999, HB 553 received an unfavorable report from the

House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Office of State's Attorneys' Coordinator, State Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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