

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 172

(Senator Jacobs, *et al.*)

Judicial Proceedings

**Murder in the First Degree - Requirement for State to Seek the Death Penalty -
Dawn's Law**

This bill requires the State to seek a death sentence in every prosecution for murder in the first degree that meets statutory requirements for death penalty-eligible cases, unless the victim's family indicates in writing that the family does not want the State to seek the death penalty.

In the case of a defendant who is not disqualified from imposition of the death penalty due to mental retardation or being under the age of 18 at the time of the murder, the defendant may be sentenced to life imprisonment without the possibility of parole only if: (1) the victim's family indicates in writing that the family does not want the State to seek the death penalty; and (2) at least 30 days before trial, the State gave written notice to the defendant of the State's intention to seek life imprisonment without the possibility of parole.

The bill has prospective application. The bill may not be applied or interpreted to have any effect on or application to any prosecution for murder in the first degree where the State's written notice of its intention in the prosecution is given to the defendant before the bill's October 1, 2003 effective date.

Fiscal Summary

State Effect: Potential significant expenditure increase for the Office of the Public Defender (OPD) and the Judiciary (could be in the millions of dollars). A substantial increase in death penalty trials could be expected under the provisions of this bill.

Local Effect: Potential significant. State's Attorneys would be required to submit substantially more first degree murder cases for death penalty consideration. **This bill imposes a mandate on local government.**

Small Business Effect: None.

Analysis

Current Law: To be first degree murder, the murder must be:

- (1) a willful, deliberate, and premeditated killing;
- (2) committed by lying in wait;
- (3) committed by poison;
- (4) committed in the perpetration of, or attempt to perpetrate, arson in the first degree, in the burning or attempting to burn any barn, tobacco house, stable, warehouse, or other outbuilding; or
- (5) committed in the perpetration of, or attempt to perpetrate, a rape in any degree, first or second degree sexual offense, sodomy, mayhem, robbery, carjacking, armed carjacking, burglary in the first, second, or third degree, kidnapping, kidnapping a person under 16, escape in the first degree from a correctional facility, or the manufacture or possession of a destructive device.

A person who commits murder in the first degree is guilty of a felony and is subject to a sentence of death, life imprisonment without the possibility of parole, or life imprisonment. Unless a death sentence or a sentence of life imprisonment without the possibility of parole is imposed, the sentence must be life imprisonment.

A defendant who is guilty of murder in the first degree may be sentenced to death only if the State gives the defendant the required 30-day notice to seek a death sentence and each aggravating circumstance on which the State intends to rely. The State is not required to seek a death penalty in a case where one or more aggravating factors exist. The State's Attorney has discretion to determine which death penalty-eligible cases will be submitted for death penalty consideration, and which cases will not be submitted.

With the exception of defendants who engage or employ another to commit a murder and persons committing the murder of a law enforcement officer while in the performance of the officer's duties, only principals in the first degree (i.e., the person who actually committed the murder) are eligible for the death penalty. A defendant may not be

sentenced to death, but must be sentenced to life imprisonment without the possibility of parole if the defendant was under 18 at the time of the murder, or the defendant proves by a preponderance of the evidence that the defendant was mentally retarded.

If the State gives notice of the intent to seek life imprisonment without the possibility of parole, but did not give notice of the intention to seek the death penalty, the court is required to conduct a sentencing proceeding as soon as practicable to determine whether the defendant should be sentenced to life imprisonment without parole or to life imprisonment.

If the State gives notice to seek the death penalty, or in the alternative, a sentence of life imprisonment without the possibility of parole, but the court or jury determines that a death sentence may not be imposed, the court or jury must determine whether the defendant is to be sentenced to life imprisonment without the possibility of parole, or to life imprisonment.

Background: The reference to “Dawn’s Law” in this bill is a reference to Dawn Romano, who was murdered by Steven Oken. Steven Oken is on death row for the murder of Dawn Romano and others. A warrant of execution was recently completed for Steven Oken and he was scheduled to be executed the week of March 17. However, the Court of Appeals has stayed the execution, pending review of Maryland’s death penalty statute based on the recent Supreme Court decisions *Ring v. Arizona* 01-480 __U.S.__ (2002) and *Apprendi v. New Jersey* 530 U.S. 466 (2000).

Oken is challenging the ability in Maryland for either a court or jury to make a death sentence determination, rather than having only a jury make that determination. State death penalty sentencing schemes where only the court could make a death sentence determination were struck down in *Ring*. Oken is also challenging Maryland’s weighing of aggravating versus mitigating circumstances by a preponderance of the evidence. Oken believes that *Apprendi* requires the State to prove each factor considered in a death sentence determination beyond a reasonable doubt, including the weighing of aggravating versus mitigating factors. The Court of Appeals has tentatively scheduled a hearing in May 2003.

Other death penalty challenges are possible due to the findings of the recently released University of Maryland study of Maryland’s death penalty. The study reviewed 6,000 first and second murder degree cases from 1978 to 1999 and found that the race of the defendant did not, in and of itself, affect the administration of the death penalty in Maryland. However, the race of the victim and the jurisdiction of prosecution were factors that affected whether a death penalty was sought, whether a notice to seek the death penalty was retained or withdrawn, and the likelihood that the death penalty would be imposed. The study pointed out large differences in how different jurisdictions

process death penalty cases in Maryland. The study found that how different jurisdictions handle death-eligible cases could not solely be attributed to the kinds of homicides committed in those jurisdictions.

The State's Attorneys, who are responsible for prosecution of capital crimes, have wide discretion to determine whether or not to process a death-eligible homicide as a capital crime. In the University of Maryland study, 1,311 cases that met the legal definition for "death penalty-eligible" from the period 1978 to 1999 were reviewed. Out of those cases, State's Attorneys filed a formal notification to seek the death penalty in 353 cases, or 27% of the total number of cases. The formal notification was withdrawn in 140 of the 353 cases (40% of the death penalty-eligible cases), most frequently due to a plea with the defendant. In about 60%, or 213 cases, the death penalty notification was filed and retained. From the group of cases in which the death penalty notification was filed and retained, 180 cases, or 84%, advanced to a penalty trial.

State Expenditures: General fund expenditures for the Judiciary and OPD could increase significantly under this bill. To date, little reliable data has been produced on the cost of seeking the death penalty in a capital case. The Court of Special Appeals and Court of Appeals would have to expend significantly more resources on the appeals from the increased number of cases. However, the fiscal impact of the increase cannot be reliably quantified.

OPD advises that death penalty cases could increase fivefold, based on data from the University of Maryland study of the death penalty that indicated prosecutors have historically filed a formal notification of death penalty review in about 20% of all eligible cases. The fiscal 2004 allowance for the Capital Defense Division of OPD is \$906,918. Four staff attorneys handle about 40 to 50 open cases on an annual basis. To accommodate the increase in death penalty trials, expenditures for OPD would probably need to increase to about \$4.5 million.

For the Department of Public Safety and Correctional Services, there would be no fiscal impact from the bill. The number of potential death row inmates is so small compared to the total number of prisoners they are required to manage, that a change in the death row population would not measurably impact agency expenditures.

Local Fiscal Effect: The expenditures for Offices of State's Attorneys could increase significantly. Death penalty notifications would have to be filed and pursued in nearly every death penalty-eligible case. At the circuit court level, trials and sentencing proceedings would be more numerous and substantially lengthier to accommodate the increased caseload.

Additional Information

Prior Introductions: None.

Cross File: HB 783 (Delegate Amedori, *et al.*) – Judiciary.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, University System of Maryland, Department of Legislative Services

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