

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 572 (Senators Hughes and Gladden)
Judicial Proceedings

Criminal Law - Death Penalty - Felony Murder

This bill excludes from consideration of the death penalty a conviction of murder in the first degree when the murder was committed during the perpetration of or attempt to perpetrate specified felonies. The bill alters the possible sentences for these crimes to life imprisonment without the possibility of parole, or life imprisonment. It also removes circumstances of felony murder from the list of aggravating circumstances to be considered in a death penalty sentencing proceeding.

The bill has prospective application.

Fiscal Summary

State Effect: Potential significant savings for the Office of the Public Defender (OPD) from a substantial reduction in cases qualifying for the death penalty. Potential savings for the Judiciary from a reduction in death penalty cases heard by the circuit courts.

Local Effect: Potential savings for the Judiciary due to a reduction of death penalty cases heard by the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: A person who commits one of the following offenses is guilty of a felony and on conviction must be sentenced to life imprisonment without the possibility of parole, or life imprisonment:

- murder in the first degree in the perpetration of or the attempt to perpetrate:
 - arson in the first degree;
 - burning a barn or other structure;
 - burglary in the first, second, or third degree;
 - carjacking or armed carjacking;
 - escape in the first degree from a State or local correctional facility;
 - kidnapping;
 - mayhem;
 - rape;
 - robbery;
 - sexual offense in the first or second degree;
 - sodomy; or
 - manufacturing or possession of destructive devices.

The bill repeals the provision of the death penalty for the aforementioned crimes.

The bill repeals the requirement that the court or jury consider any of the following as aggravating circumstances when determining a death sentence:

- whether the victim was taken or attempted to be taken in the course of an abduction, kidnapping, or an attempt to abduct or kidnap;
- whether the victim was a child abducted as specified in statute; or
- whether the defendant committed the murder while committing or attempting to commit arson in the first degree, carjacking or armed carjacking, rape in the first degree, robbery, or sexual offense in the first degree.

The bill has prospective application and may not be applied or interpreted to have any application to the commission of a murder in the first degree that was committed before the bill's October 1, 2003 effective date.

Current Law: A murder is in the first degree if it is:

- a deliberate, premeditated and willful killing;

- committed by lying in wait;
- committed by poison; or
- committed in the perpetration of or the attempt to perpetrate:
 - arson in the first degree;
 - burning a barn or other specified structure;
 - burglary in the first, second, or third degree;
 - carjacking or armed carjacking;
 - escape in the first degree from a State or local correctional facility;
 - kidnapping;
 - mayhem;
 - rape;
 - robbery;
 - sexual offense in the first or second degree;
 - sodomy; or
 - manufacturing or possession of destructive devices.

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

A defendant found guilty of murder in the first degree may be sentenced to death only if the State gave written notice to the defendant at least 30 days before trial of the intention to seek a death sentence and each aggravating circumstance upon which the State will rely. A defendant may be sentenced to death only if, with regard to the specified aggravating circumstances, the defendant was a principal in the first degree, or a principal in the second degree who willfully, deliberately, and with premeditation intended the death of a law enforcement officer, was a major participant in the murder, and was actually present at the time and place of the murder. A defendant found guilty of murder in the first degree may be sentenced to death only if the death sentence is imposed as required by statute.

In determining whether a death sentence should be imposed, the court or jury must first consider whether any of the following aggravating circumstances existed beyond a reasonable doubt:

- one or more persons committed the murder of a law enforcement officer while the officer was on duty;
- the defendant committed the murder while confined in a correctional facility;

- the defendant committed murder in furtherance of an escape from, attempt to escape from, or an attempt to evade lawful arrest, custody, or detention by a correctional guard or officer, or a law enforcement officer;
- the victim was taken or attempted to be taken in the course of an abduction, kidnapping, or an attempt to abduct or kidnap;
- the victim was a child abducted, as specified in statute;
- the defendant committed 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 the promise of remuneration;
- the defendant committed the murder while under a death sentence or life imprisonment;
- the defendant committed more than one murder in the first degree arising out of the same incident; or
- the defendant committed murder while committing or attempting to commit:
 - arson in the first degree;
 - carjacking or armed carjacking;
 - rape in the first degree;
 - robbery; or
 - sexual offense in the first degree.

Background: In January 2003, the University of Maryland released a two-year study of the influence of geography and race in administration of Maryland's death penalty. The study, entitled *An Empirical Analysis of Maryland's Death Sentencing System With Respect to the Influence of Race and Legal Jurisdiction*, contained data relating to the characteristics of death penalty-eligible cases in Maryland. About 80% of Maryland's death penalty cases contain one or more aggravating factors relating to felony murder. Usually, the aggravating circumstance of felony murder is present with other aggravating circumstances. If one or more aggravating circumstances is determined to exist beyond a reasonable doubt, the State's Attorney is authorized to seek the death penalty, but is not statutorily required to seek the death penalty.

State and Local Fiscal Impact: Death penalty cases involve a greater expenditure of judicial resources than other first degree murder cases. First degree murder cases that involve the perpetration or attempt to perpetrate a felony make up a significant proportion of those cases found eligible for death penalty proceedings. The University of Maryland study of the death penalty contained data that indicated up to 80% of cases deemed

eligible for the death penalty involve an aggravating felony circumstance. Since this aggravating circumstance is usually present with one or more other aggravating circumstances, no reliable data is available to identify the number of death penalty cases that would not occur due to the bill. Also, the State's Attorneys have wide latitude to submit cases for death penalty proceedings. A State's Attorney may decide not to submit a first degree murder case with felony elements for the death penalty, even though the case contains the elements required for a death penalty case.

The OPD Capital Defense Division had 42 death penalty cases open during fiscal 2002. A staff of four attorneys handles the cases. An 80% reduction in the OPD capital defense caseload could reduce the number of death penalty cases to only nine or ten. OPD estimates that the incremental defense cost for a capital case is about \$80,000 per case.

The Judiciary estimates some savings could occur from this bill, although they cannot be quantified. Death penalty cases involve a greater expenditure of judicial resources than other first degree murder cases. The Judiciary will still need to provide extended proceedings for consideration of the sentence of life imprisonment without the possibility of parole, or life imprisonment, but that consideration generally uses less in judicial resources than death penalty cases.

The Office of the Attorney General (OAG) advises that the bill would have no fiscal impact. OAG becomes involved in death penalty cases only at the appeals stage. It is unknown whether those sentenced to life imprisonment or life imprisonment without the possibility of parole would apply for appellate review to the same extent as those under sentence of death.

The bill would not have a fiscal impact on the Department of Public Safety and Correctional Services. The number of death row inmates is so small in relation to the total population they are required to manage, that a reduction in the number of inmates would not, by itself, have any fiscal impact.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Office of the Attorney General, Department of Public Safety and Correctional Services, Department of Legislative Services

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