

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 225

(Delegate Anderson, *et al.*)

Judiciary

Criminal Law - Murder in the First Degree - Aggravating Circumstances - Child Victim

This bill alters one of the aggravating circumstances that a jury must consider during a death penalty sentence proceeding from the victim was an abducted child under the age of 12 to the victim was a child under the age of 12.

Fiscal Summary

State Effect: The bill's requirements could be handled with existing resources.

Local Effect: The bill's requirements could be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: If the State gave the required notice, a separate sentencing proceeding must be held as soon as practicable after a defendant is found guilty of murder in the first degree to determine whether the defendant is to be sentenced to death.

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 an abducted child, under the age of 12;
- the defendant committed murder under an agreement or contract for remuneration or the promise of remuneration to commit the murder;
- the defendant employed or engaged another to commit murder and the murder was committed under an agreement or contract for remuneration or promise of remuneration;
- the defendant committed murder while under a death sentence 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 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.

If the court or jury does not find that one or more aggravating circumstances exist beyond a reasonable doubt, it shall state that conclusion in writing and a death sentence may not be imposed.

Background: According to the FBI *Uniform Crime Reports*, in the U.S., there were 725 victims of murder or nonnegligent homicide who were 12 years old or younger in 2001, the most recent data available. According to the Bureau of Justice Statistics, there were 430 victims of murder in Maryland in 2000, the latest year available, and 15 of the murder victims were children under the age of 14.

In October 2002, the Washington metropolitan area was terrorized by random sniper shootings that took the lives of ten people and seriously injured three others. One of the three seriously injured victims was a boy of 13 who was on his way into a middle school in Prince George's County. The boy was shot at the beginning of the school day with other children of various ages and adults in the area. In communicating with police after that event, the suspects reportedly stated that no children were safe. Sniper shootings,

especially of children, are rare. However, if a child under the age of 12 had been a victim of first degree murder in Maryland under those or other circumstances, that occurrence, in and of itself, would not have been an aggravating circumstance for consideration of the death penalty unless it had occurred in connection with an abduction.

State and Local Fiscal Effect: The Office of the Public Defender advises that the bill's provisions could create a substantial fiscal impact for the office. Each new capital case is estimated to cost the Office \$80,000. However, the Department of Legislative Services expects that the bill's provisions could be handled within existing budgeted resources of the Office of the Public Defender and State's Attorneys' offices.

The bill's provisions could create a marginal increase in the number of cases that are considered "death penalty-eligible." However, State's Attorneys have wide discretion in choosing which cases will be submitted for death penalty notification. A recent study of death penalty administration in Maryland, completed by the University of Maryland, reported that on a statewide basis, State's Attorneys file notification to seek the death penalty in about 27% of all eligible cases. In about 40% of the cases where notification is filed, that notification is later withdrawn. As a result, a death penalty notice is likely to be filed and retained in only about 16% of all cases that meet the legal requirements for "death penalty-eligible." An expansion of the factors that create a death penalty-eligible case does not necessarily, in and of itself, create an increase in death penalty cases, since the designation of a case as "capital" is dependent on other factors and subject to the discretion of the State's Attorney.

Additional Information

Prior Introductions: None.

Cross File: None.

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 of Maryland, Federal Bureau of Investigation, Bureau of Justice Statistics, *The Baltimore Sun*, Department of Legislative Services

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