

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 378 (Senator Jacobs, *et al.*)
Judicial Proceedings

Criminal Law - Death Penalty - Multiple Murders

This bill adds the commission of more than one murder in the first degree within a three-year period to the list of aggravating circumstances a court or jury is required to consider before a defendant can be sentenced to death.

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 a child abducted, as specified in statute;
- 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: 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. Six of the victims were killed in Montgomery County. One victim was a resident of Washington, DC and three other victims were killed in northern Virginia. Two suspects, John Allen Muhammad and Lee Boyd Malvo, were arrested at a truck stop near Frederick on October 24. The investigative task force was led out of Montgomery County, but required the cooperative efforts of law enforcement from all jurisdictions, including the federal law government.

Given that most of the victims were residents of Maryland and killed in Montgomery County, the Montgomery County State's Attorney believed that the suspects should first be tried in Maryland courts. However, the federal government took custody of the

suspects and determined that prosecutors from Virginia should be the first to try the suspects. U.S. Attorney General John Ashcroft indicated that one factor in determining the first jurisdiction was where prosecutors could most likely win a death penalty verdict, especially against Lee Boyd Malvo, who was a juvenile at the time of his arrest. Unlike Virginia, both Maryland and the federal government prohibit the execution of anyone under the age of 18 and Washington DC does not impose the death penalty.

Another advantage for the Virginia prosecution is that Virginia law permits the sniper suspects to be tried under an anti-terrorism statute which authorizes the death penalty without having to prove who actually pulled the trigger in the crimes.

Another issue that placed Maryland at a disadvantage was the requirement that prosecutors prove one of ten aggravating factors beyond a reasonable doubt and that either there are no mitigating circumstances, or the aggravating factors outweigh any mitigating circumstances by a preponderance of the evidence, before the death penalty may be imposed. One aggravating factor under Maryland law is when multiple murders in the first degree arise out of the same incident. Because the sniper shootings occurred at different times and different locations, it could be difficult for prosecutors to prove beyond a reasonable doubt that the sniper shootings were the result of the “same incident.”

The bill would add, as another aggravating circumstance, the commission of more than one murder in the first degree within a three-year period, without any requirement to show that the murders arose out of the same incident.

Additional Information

Prior Introductions: None.

Cross File: HB 789 (Delegate Amedori, *et al.*) – Judiciary.

Information Source(s): State’s Attorneys’ Association, 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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