

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 520  
Judiciary

(Delegate Boutin, *et al.*)

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Homicide – Victim – Viable Fetus

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This bill allows for the prosecution of murder, manslaughter, or unlawful homicide for an act or omission that occurred while the victim was a viable fetus and caused the victim's death. This does not apply to a woman's right to terminate a pregnancy and does not subject a physician to prosecution for performing an abortion.

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Fiscal Summary

**State Effect:** Potential significant increase in general fund expenditures for the Office of Chief Medical Examiner (OCME). Potential minimal increase in general fund revenues and expenditures due to the expanded application of current law penalty provisions.

**Local Effect:** Potential minimal increase in local revenues and expenditures due to the expanded application of current law penalty provisions.

**Small Business Effect:** None.

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Analysis

**Current Law:** A murder that is not first degree murder is considered second degree murder. A violator is guilty of a felony and subject to imprisonment for up to 30 years.

Manslaughter is a common law offense. The meaning accorded to involuntary and voluntary manslaughter is judicially determined and based on case law. The distinction generally depends on whether there was an intention to kill. Manslaughter generally is a felony and distinct from murder by virtue of the absence of malice. Voluntary

manslaughter is distinguished from murder by absence of malice aforethought, express or implied, and by having a reasonable provocation.

Manslaughter, except for involuntary manslaughter, is a crime of violence for purposes of sentencing and parole laws. The crime is a felony, with a maximum penalty of 10 years imprisonment in a State facility, or two years detention in a local facility and/or a \$500 fine.

“Unlawful homicide” includes murder, manslaughter, and homicide by motor vehicle or vessel.

If an abortion is provided, it must be performed by a licensed physician.

The State may not interfere with a woman’s decision to end a pregnancy before the fetus is viable or at any time during a woman’s pregnancy if the procedure is necessary to protect the life or health of the woman or the fetus is affected by a genetic defect or serious deformity or abnormality. A viable fetus is one that has a reasonable likelihood of surviving outside of the womb.

A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion made in good faith and in the physician’s best medical judgment following accepted standards of medical practice.

Not including legal abortions, there are about 1,000 fetal deaths and neonatal deaths per year in Maryland. In addition, an average of 10 women in the State die each year while pregnant with fetuses of potentially viable age.

**State Revenues:** General fund revenues could increase minimally due to the expanded application of current law penalty provisions from cases heard in the District Court.

**State Expenditures:** According to OCME, this bill would require an examination (autopsy) on over 500 additional cases per year to find the cause and manner of death of viable fetuses. Accordingly, OCME believes that this bill would necessitate the hiring of nine additional staff, estimated at \$599,471 in fiscal 2005 and, allowing for annualization and inflation, growing to \$900,768 by fiscal 2009.

While the Department of Legislative Services (DLS) concurs that this bill has the potential to increase costs for OCME, DLS advises that the OCME cost estimates are unrealistically high. The actual number of additional examinations of a fetus by a medical examiner would be driven by a claim or suspicion of homicide and not by the number of such cases. Predicting the number of such claims or suspicions cannot be readily quantified, but are likely to be far less than the 500 cited by OCME. However, any significant increase in the number of autopsies by OCME could require at least one additional medical examiner at a cost (including fringe benefits and operating expenses) of over \$200,000, annually.

General fund expenditures could increase minimally as a result of the expanded application of current law penalty provisions due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

**Local Revenues:** Revenues could increase minimally due to the expanded application of current law penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2004  
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