

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1081
Judiciary

(Delegate Quinter, *et al.*)

Prosecutor Protection Act of 2004

This bill adds the murder of a prosecutor to the list of aggravating circumstances that a jury must consider when deciding whether to impose a death sentence.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary: A prosecutor is defined to mean a State's Attorney, an Assistant State's Attorney, a U.S. attorney, or an assistant U.S. attorney.

A defendant found guilty of murder in the first degree of a prosecutor may be sentenced to death only if the defendant: (1) was a principal in the first degree; or (2) was a principal in the second degree who willfully, deliberately, and with premeditation intended the death of the law enforcement officer, was a major participant, and was actually present at the time and place of the murder, and the death sentence is imposed as provided by law.

In deciding a sentence of death, the court or jury must first consider whether the following aggravating circumstance exists beyond a reasonable doubt: one or more

persons committed the murder of a prosecutor in retaliation for, or with the intent to interfere with the performance of the prosecutor's duties.

Current Law: A defendant found guilty of murder in the first degree may be sentenced to death only if the State gives the defendant 30 days' notice to seek a death sentence and each aggravating circumstance on which the State intends to rely. A defendant found guilty of murder in the first degree of a law enforcement officer may be sentenced to death only if the defendant: (1) was a principal in the first degree; or (2) was a principal in the second degree who willfully, deliberately, and with premeditation intended the death of the law enforcement officer, was a major participant, and was actually present at the time and place of the murder, and the death sentence is imposed as provided by 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: On December 4, 2003, Assistant U.S. Attorney Jonathan Luna was murdered and his body was found in Lancaster County, Pennsylvania. At the time of his murder, he was in plea negotiations for a high profile drug case. It is not clear whether the case he was working on, or any of the other numerous prosecutions he was involved in, were connected to his murder. To date, the case remains unsolved, as no suspects have yet been identified.

State and Local Fiscal Effect: The Office of the Public Defender (OPD) advises that the bill's provisions could create a substantial fiscal impact. Each new capital case is estimated to cost the office \$80,000. However, the Department of Legislative Services advises that it is expected that the bill's requirements could be handled within the existing budgeted resources of OPD 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, CNN.com, Foxbaltimore.com, Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2004
mam/jr

Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510