

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 181 (The President, *et al.*) (By Request – Administration)
Judicial Proceedings

Crimes - Victim and Witness Intimidation - Death Penalty

This Administration bill expands the list of aggravating circumstances that a court jury must consider during a death penalty sentencing proceeding to include whether the defendant committed murder while committing one of the following offenses:

- harming, threatening to harm, or damaging the property of another to induce false testimony or the avoidance of a subpoena;
- intentionally harming another or damaging property with the intent of retaliating against a victim or witness for testimony or reporting a crime; or
- by threat, force, or corrupt means, trying to influence, intimidate, or impede a juror, witness, or officer of the court from the performance of the person's official duties.

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: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: If the State gives the required notice to seek the death penalty, 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.

A person may not harm another, threaten to harm another, or damage or destroy property with the intent to: (1) influence a victim or witness to testify falsely or withhold testimony; or (2) induce a victim or witness to avoid a subpoena or summons or to be absent from an official proceeding to which the victim or witness has been subpoenaed or summoned. A person who violates this provision is guilty of a misdemeanor and subject to imprisonment for up to five years.

A person may not intentionally harm another or damage or destroy property with the intent of retaliating against a witness or victim for giving testimony in an official proceeding, or reporting a crime or delinquent act. A person who violates this provision is guilty of a misdemeanor and subject to imprisonment for up to five years.

A person may not by force, threat of force, or corrupt means try to influence, intimidate, or impede a juror, witness, or officer of the court from carrying out the person's official duties. A person who violates this provision is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$10,000.

Background: The murder of witnesses in retaliation for, or to prevent testimony and the intimidation or harming of jurors has been a pervasive problem in Maryland's criminal justice system. According to the Criminal Justice Reform Education Fund, Arizona, California, Illinois, and Oregon are among the states that have enacted legislation that makes the murder of a witness in retaliation for, or to prevent testimony, an aggravating factor that jurors must consider when deciding whether a death sentence should be imposed. The retaliatory murder of a witness, victim, or informant is punishable by death under federal criminal law.

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: HB 301 (The Speaker and the Minority Leader, *et al.*) (By Request – Administration) – 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, Criminal Justice Reform Education Fund, Department of Legislative Services

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