

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 248
Judiciary

(Delegate Hennessy, *et al.*)

Death Penalty - Aggravating Circumstances - Murder in Retaliation for
Testimony or with Intent to Prevent Testimony

This bill adds the following as an aggravating circumstance a court or jury is required to consider before a defendant can be sentenced to death: the murder of a person or the person's immediate family in retaliation for testifying or with the intent to prevent the person from testifying in a trial, hearing, investigation, or other official proceeding conducted by a federal or State court.

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

Current Law: 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: The murder of witnesses in retaliation for, or to prevent, testimony 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. Federal criminal law makes the retaliatory murder of a witness, victim, or informant punishable by death.

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, Commission on Criminal Sentencing Policy, Office of the Attorney General, Criminal Justice Reform Education Fund, Department of Legislative Services

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mh/jr

Analysis by: Karen D. Morgan

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