

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 349

(Senator Green, *et al.*)

Judicial Proceedings

Unborn Victims of Violence Act

This bill provides that the laws relating to murder, attempted murder, voluntary or involuntary manslaughter, manslaughter by vehicle or vessel, homicide by motor vehicle or vessel while impaired or under the influence, assault, reckless endangerment, life threatening injury by motor vehicle or vessel, and poisoning apply to circumstances where the victim is “an unborn child.” The bill provides that these provisions do not apply to acts committed by the mother of the unborn child, acts committed during a legal abortion to which the mother consents, or acts committed in accordance with specified medical practices.

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.

Analysis

Bill Summary: An “unborn child” means an unborn human being who is conceived but not yet completely born.

The bill provides that a person may not be sentenced to death for the murder of an unborn child and provides that such a murder may not be considered when determining whether a defendant committed more than one murder as an aggravating circumstance for death penalty eligibility. If the name of the victim is required in a charging document for any of the covered offenses, the bill provides that the name of the victim must be stated as “the unborn child” followed by the name of the mother.

The bill includes the mother of an unborn child victim as a victim who may agree with the defendant to the dismissal of assault charges when a pretrial motion to that effect has been made.

Current Law: Generally, the crimes covered under this bill are as follows:

Murder and Manslaughter

First degree murder is a felony and a violator must be sentenced to life imprisonment, life imprisonment without the possibility of parole, or death. Attempted first degree murder is a felony that subjects the violator to life imprisonment. 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. Attempted second degree murder is a felony that subjects the violator to maximum imprisonment for 30 years.

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. Manslaughter by vehicle or vessel prohibits a person from causing the death of another as a result of the person’s driving, operating, or controlling a vehicle or vessel in a grossly negligent manner. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$5,000.

Homicide by Motor Vehicle or Vessel

There are four distinct offenses involving homicide by motor vehicle or vessel while under the influence of, or impaired by alcohol or drugs. Each offense is a felony which subjects the violator to a maximum imprisonment of three years or five years and/or a maximum fine of \$5,000.

Assault and Reckless Endangerment

First degree assault is limited to intentionally causing or attempting to cause serious physical injury to another, or committing an assault with a firearm. A violator is guilty of

a felony and subject to a maximum penalty of 25 years. An assault on any person that does not involve causing or attempting to cause serious physical injury or the use of a firearm is assault in the second degree. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$2,500 and/or imprisonment for 10 years.

Reckless endangerment is a misdemeanor which subjects a violator to maximum penalties of imprisonment for five years and/or a fine of \$5,000. To be found guilty of reckless endangerment, a defendant must be charged specifically with reckless endangerment.

Poisoning

A person may not attempt to poison another. A violator is guilty of a felony and subject to imprisonment for a minimum of two years and a maximum of 10 years. A person may not knowingly and willfully contaminate, attempt to contaminate, or conspire to contaminate the water of a source or tributary of a water supply or any drink, food, food product, or food supply by adding disease germs, bacteria, poison, or poisonous matter. A violator is guilty of a felony and subject to maximum imprisonment of 20 years.

With the exception of poisoning, all of the above listed offenses have a statutorily provided standard for a charging document. Of those offenses, all except reckless endangerment require inclusion of the victim's name.

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

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.

Background: A medical examiner is required to investigate the death of a human being if the death occurs: (1) by violence; (2) by suicide; (3) by casualty; (4) suddenly, if the deceased was in apparent good health or unattended by a physician; or (5) in any suspicious or unusual manner. A medical examiner must investigate the death of a human fetus if: (1) regardless of the duration of the pregnancy, the death occurs before the complete expulsion or extraction of the fetus from the mother; and (2) the mother is not attended by a physician at or after the delivery.

According to the 2003 *Maryland Statistical Abstract*, in calendar 2000, there were a total of 43,602 deaths in Maryland. Of that number, 500 were homicides. 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: OCME advises that 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 nine new positions at a cost of \$599,471 in fiscal 2005. Allowing for annualization and inflation, these costs grow 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.

Additional Information

Prior Introductions: None.

Cross File: HB 802 (Delegate Frank, *et al.*) – Health and Government Operations.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction), Department of Health and Mental Hygiene (Office of Chief Medical Examiner), Department of Legislative Service

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Analysis by: Guy G. Cherry

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