

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1170
Judiciary

(Delegate Quinter, *et al.*)

Serial Murder Death Penalty Act

This bill adds the commission of three or more murders in the first degree within a four-year period to the list of aggravating circumstances a court or jury is required to consider before a defendant can be sentenced to death.

Fiscal Summary

State Effect: It is expected that the Office of the Public Defender (OPD), the Offices of State's Attorneys, the Judiciary, and the Department of Public Safety and Correctional Services could meet the bill's requirements with existing resources.

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

Small Business Effect: None.

Analysis

Current Law: If the State gave 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.

If the court or jury does find beyond a reasonable doubt that one or more aggravating circumstances exist, then the court or jury must consider if any mitigating circumstances, as specified in statute, exist based on a preponderance of the evidence. If the court or jury finds that one or more mitigating circumstances exist, then the court or jury must determine whether the aggravating circumstances outweigh the mitigating factors by a preponderance of the evidence. If the court or jury finds that the aggravating circumstances outweigh the mitigating factors, a death sentence must be imposed. If the aggravating circumstances do not outweigh the mitigating factors, a death sentence may not be imposed. A court or jury must put its determination in writing. A jury

determination to impose the death penalty must be unanimous and signed by the jury foreperson.

Background: In October 2002, the Washington metropolitan area was terrorized by random sniper shootings that took the lives of 10 people and seriously injured 3 others. Six of the victims were killed in Montgomery County. One victim was a resident of Washington, DC, and three other victims were killed in northern Virginia. Two suspects, John Allen Muhammad and Lee Boyd Malvo, were arrested. The investigative task force was led out of Montgomery County, but required the cooperative efforts of law enforcement from all jurisdictions, including the federal government.

Given that most of the victims were residents of Maryland and killed in Montgomery County, the Montgomery County State's Attorney believed that the suspects should first be tried in Maryland courts. However, the federal government took custody of the suspects and determined that prosecutors from Virginia should be the first to try the suspects. Then U.S. Attorney General John Ashcroft indicated that several factors were considered in choosing a jurisdiction other than Maryland to try the suspects first. One factor was that before a death penalty can be imposed in Maryland, prosecutors have to prove 1 of 10 aggravating factors beyond a reasonable doubt and that either there are no mitigating circumstances, or the aggravating factors outweigh any mitigating circumstances by a preponderance of the evidence. One aggravating factor under Maryland law is when multiple murders in the first degree arise out of the same incident. Because the sniper shootings occurred at different times and different locations, it could be difficult for prosecutors to prove beyond a reasonable doubt that the sniper shootings were the result of the "same incident."

The bill would add, as another aggravating circumstance, the commission of three or more murders in the first degree within a four-year period, without any requirement to show that the murders arose out of the same incident.

State and Local Fiscal Effect: OPD advises that each new capital case is estimated to cost the office \$80,000. There is no available data to determine how many cases could be referred to OPD that meet the criteria of this bill. However, an expansion of aggravating factors does not, in and of itself, mandate that OPD will be undertaking any new capital cases. The addition of an aggravating circumstance may mean a marginal increase in the time required to prepare a death penalty case. However, the Department of Legislative Services advises that OPD can meet the bill's requirements with existing resources.

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 – College Park, reported that on a statewide basis, State's attorneys file notification to seek the death penalty in about 27% of 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: This bill is a reintroduction of HB 947 of 2004, which was heard in the Judiciary Committee, but received no further action. A prior introduction of this bill, HB 835 of 2003 was heard in the Judiciary Committee, but received no further action.

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, *The Baltimore Sun*, University of Maryland – College Park, Department of Legislative Services

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