

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1400 (Delegates O'Donnell and Aumann)
Judiciary

Sentencing - Death Penalty - Murder of Individual Under Protective Order

This bill specifies that in a death penalty case, for sentencing purposes, it is an aggravating circumstance for murder in the first degree if the victim was a person: (1) eligible for relief under an existing temporary *ex parte* order or a final protective order to protect the victim from abuse; and (2) whom the defendant murdered in violation of that order. The bill also expands the definition of "defendant," providing that for a murder committed in violation of a protective order, a defendant is not limited to a principal in the first degree.

Fiscal Summary

State Effect: It is expected that the Office of the Public Defender, 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: None.

Small Business Effect: None.

Analysis

Current Law:

Aggravating Circumstances in Death Penalty

To be first degree murder, the murder must be:

- a willful, deliberate, and premeditated killing;
- committed by lying in wait;
- committed by poison;
- committed in the perpetration of, or attempt to perpetrate, arson in the first degree or the burning or attempting to burn any barn, tobacco house, stable, warehouse, or other outbuilding; or
- committed in the perpetration of, or attempt to perpetrate, rape in any degree; first or second degree sexual offense; sodomy; mayhem; robbery; carjacking; armed carjacking; burglary in the first, second, or third degree; kidnapping; kidnapping a person under 16; escape in the first degree from a correctional facility; or manufacture or possession of a destructive device.

If the State seeks the death penalty and a defendant is found guilty of murder in the first degree, the court or jury, in determining the sentence, must first consider whether any of the following aggravating circumstances exists, beyond a reasonable doubt, to impose a sentence of death:

- 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 of the aggravating circumstances exist, a sentence of death may not be imposed. If the court or jury finds that one or more aggravating circumstances exist, then the court or jury must consider whether any specified mitigating circumstances exist. The court or jury then weighs whether the aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. If so, the death sentence is imposed. If not, the sentence is either life imprisonment or life imprisonment without parole.

With the exception of defendants who engage or employ another to commit a murder and persons committing the murder of a law enforcement officer while in the performance of the officer's duties, only principals in the first degree (*i.e.*, the person who actually committed the murder) are eligible for the death penalty.

Ex Parte Order and Final Protective Order

If a court finds that there are reasonable grounds to believe that a person eligible for relief has been abused, the court may enter a temporary *ex parte* or final protective order and order the respondent to:

- refrain from further abuse or threats of abuse;
- refrain from contacting, attempting to contact, or harassing the person eligible for relief;
- refrain from entering the residence of the person eligible for relief;
- vacate the home immediately, where the person eligible for relief and the respondent are residing together;
- remain away from the place of employment, school, or temporary residence of the person eligible for relief; and
- remain away from a child care provider of a person eligible for relief.

The court may also award temporary custody of a minor child of the respondent and a person eligible for relief. For a final protective order, the court may establish temporary visitation with a minor child of the respondent and a person eligible for relief on a basis

which gives primary consideration to the welfare of the minor child and the safety of any other person eligible for relief.

The temporary *ex parte* order is effective for up to 7 days and may be extended up to 30 days. The final protective order hearing must be held no later than seven days after the service of the temporary *ex parte* order. If the court finds by clear and convincing evidence that the alleged abuse has occurred, the court may grant a final protective order. All relief granted in the final protective order is effective for the period stated in the order, not exceeding 12 months. A subsequent circuit court order pertaining to any of the provisions included in the protective order supersedes those provisions in the protective order.

Background: According to the 2004 *Uniform Crime Report*, 28 people were homicide victims as a result of domestic violence in calendar 2004. Information is not available on how many murders were perpetrated after the issuance of a temporary *ex parte* or final protective order.

The Administrative Office of the Courts reports that the District Court held 23,627 hearings for temporary protective and final protective orders during fiscal 2005. The District Court granted 14,420 temporary orders and 7,454 final protective orders. The circuit courts held at least 5,804 hearings for temporary and final protective orders in fiscal 2005. At least 1,858 temporary orders and 2,338 final protective orders were granted. However, the totals do not include Baltimore City, which provided no data to the Administrative Office of the Courts due to reporting problems.

State Fiscal and Local Effect: The Office of the Public Defender (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 2002 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: This bill is a reintroduction of HB 493 of 2005, which received an unfavorable report from the House Judiciary Committee. This bill is also a reintroduction of HB 1231 of 2004, which was heard in the House 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, Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of State Police, Department of Legislative Services

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