

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 623  
Judiciary

(Delegate McDonough, *et al.*)

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Crimes - Victim and Witness Intimidation - Death Penalty

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This 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.

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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.

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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 existed beyond a reasonable doubt, it must 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 may not solicit another to commit these acts. 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 \$5,000.

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 may not solicit another to commit these acts. 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 \$5,000.

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 may not solicit another to commit these acts. 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 \$5,000.

For the above three offenses, if the testimony, subpoena, official proceeding, or report involving a victim or witness relates to the commission of a crime of violence, or a felonious drug conviction, or solicitation or conspiracy to commit such an offense, the violator is guilty of a felony and is subject to imprisonment up to 20 years. The sentence may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation.

**Background:** Witness intimidation continues to be an impediment to the effective prosecution of violent crimes, especially in jurisdictions where witnesses are reluctant to testify for fear of their lives. According to the latest information from the National Conference of State Legislatures, at least 14 states consider the murder of a witness an aggravating factor: California, Colorado, Delaware, Illinois, Indiana, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, and Washington.

In response to problems of witness intimidation, State law provides for a limited exception to the hearsay rule for felony cases involving a crime of violence or a controlled dangerous substance if a statement is offered against a party that has engaged in, directed, or conspired to commit wrongdoing that was intended to and did procure the unavailability of the witness who made the statement.

**State and Local Fiscal Effect:** For similar bills, the Office of the Public Defender (OPD) has advised 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. The Department of Legislative Services advises that OPD can meet the bill's requirements with existing resources.

The bill could result in 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 a State's Attorney.

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### **Additional Information**

**Prior Introductions:** This bill is a reintroduction of HB 645 of 2007, which received an unfavorable report from the House Judiciary Committee. It is a reintroduction of SB 219/HB 246 of 2005. SB 219 was heard in the Senate Judicial Proceedings Committee, but received no further action. Similarly, HB 246 was heard in Judiciary but received no further action. This bill is also a reintroduction of SB 181/HB 301 of 2004. SB 181 was heard in Judicial Proceedings but received no further action. HB 301 was heard in Judiciary 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*, National Conference of State Legislatures, Department of Legislative Services

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mcp/jr

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