

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1024
Judiciary

(Delegate Frank, *et al.*)

Criminal Law - Murder or Manslaughter - Fetus

This bill repeals references to the term “viable” with respect to the term fetus in the statutory provisions concerning the offense of murder or manslaughter of a fetus. Under the bill, an individual may be prosecuted for the murder or manslaughter of a fetus, defined as a developing member of the species *Homo sapiens* who has not yet been born, as established by medical test or autopsy. The bill retains all other provisions of the current statute and applies prospectively to a crime committed on or after the bill’s June 1, 2011 effective date.

The bill takes effect June 1, 2011.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill’s expanded application of current penalties.

Local Effect: Minimal increase in local revenues and expenditures due to the bill’s expanded application of current penalties.

Small Business Effect: None.

Analysis

Current Law: With certain exceptions, a person may be prosecuted for the murder or manslaughter of a viable fetus. “Viable” is defined as the stage when, in the best medical judgment of the attending physician based on the particular facts of the case before the

physician, there is a reasonable likelihood of the fetus's sustained survival outside the womb.

To be prosecuted for murder or manslaughter of a fetus, a person must have (1) intended to cause the death of the viable fetus; (2) intended to cause serious physical injury to the viable fetus; or (3) wantonly or recklessly disregarded the likelihood that the person's actions would cause the death of or serious physical injury to the viable fetus.

These statutory provisions do not (1) apply to or infringe on a woman's right to terminate a pregnancy under the Health-General Article; (2) subject a physician or other licensed medical professional to liability for fetal death that occurs in the course of administering lawful medical care; (3) apply to an act or failure to act of a pregnant woman with regard to her own fetus; or (4) confer personhood or any rights on the fetus.

The commission of first degree murder of a viable fetus, in conjunction with the commission of another first degree murder arising out of the same incident, does not constitute an aggravating circumstance subjecting a defendant to the death penalty.

Murder that is not in the first degree is considered second degree murder. Violators are subject to a maximum penalty of 30 years imprisonment.

Manslaughter is a common law offense. The meanings accorded to involuntary and voluntary manslaughter are judicially determined and based on case law. Manslaughter is distinguished from murder by the absence of malice aforethought, express or implied. The absence of intention to kill or to commit any unlawful act which might reasonably produce death or great bodily harm is generally the distinguishing factor between voluntary and involuntary manslaughter. A person who commits manslaughter is guilty of a felony and subject to maximum penalties of (1) imprisonment for 10 years; or (2) imprisonment in a local correctional facility for 2 years and/or a fine of \$500.

Background: According to the National Conference of State Legislatures, 38 states have fetal homicide laws. Twenty-one of these states have fetal homicide laws that pertain to the earliest stages of pregnancy ("any state of gestation," "conception," "fertilization," or "post-fertilization").

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of a current incarceration penalties due to more people being committed to Division of Correction (DOC) facilities. The number of people convicted as a result of the bill 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

\$2,920 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 variable medical care and variable operating costs) is about \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's expanded application of a current monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of a current incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, State's Attorneys' Association, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, National Conference of State Legislatures, Department of Legislative Services

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