

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 586
Judiciary

(Delegate Bates, *et al.*)

Death Penalty - Evidentiary Requirements - Murder in the First Degree
Committed in a Correctional Facility

This bill establishes that a defendant convicted of committing a murder in the first degree while confined in a correctional facility may be sentenced to death even if the following evidentiary requirements for death penalty eligibility are not met: (1) biological evidence or DNA evidence that links the defendant to the act or murder; (2) a videotaped, voluntary interrogation, and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for the Office of the Public Defender (OPD). Otherwise, the bill's changes to the death penalty statute are not expected to have a significant effect on overall State operations or finances.

Local Effect: While some State's Attorneys' offices prosecute more death penalty cases than others, and the cost of bringing capital cases tends to be significantly higher than noncapital cases, the bill is not expected to have a significant effect on the staffing levels or operational expenses of any one office.

Small Business Effect: None.

Analysis

Current Law: Persons charged with first degree murder, if found guilty, are subject to penalties of life imprisonment, life imprisonment without parole, or death. During the 2009 session, the General Assembly passed legislation altering the application of the

death penalty in Maryland. Chapter 186 of 2009 restricted death penalty eligibility only to cases in which the State presents the court or jury with (1) biological or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. A defendant may not be sentenced to death if the State relies solely on evidence provided by eyewitnesses in the case.

Decisions to seek the death penalty are made by local State's Attorneys. The State is required to provide a person charged with first degree murder with written notice of an intention to seek the death penalty at least 30 days prior to trial. A defendant who was younger than age 18 at the time of the murder may not be sentenced to death. A defendant who can prove by a preponderance of the evidence that he/she was mentally retarded (intellectually disabled) at the time of the murder is also exempt from the death penalty.

A separate sentencing proceeding is required to be conducted as soon as practicable after completion of a trial to determine whether the death penalty will be imposed. A court or jury, in considering the imposition of the death penalty, must first consider whether any of 10 aggravating circumstances exist beyond a reasonable doubt. If the presence of one or more aggravating circumstances is found, the court or jury must consider whether one or more of eight mitigating circumstances exist and whether the aggravating circumstances outweigh the mitigating circumstances by a preponderance of the evidence. If a court or jury finds the existence of aggravating circumstance and that they outweigh the mitigating circumstance, or no mitigating circumstance is found, a death sentence may be imposed. The Court of Appeals is required to review the death sentence on the record. Implementation of the death penalty must be carried out by the Division of Correction (DOC) in the Department of Public Safety and Correctional Services (DPSCS).

Background: Two inmates at the House of Correction in Jessup were charged with the 2006 killing of Corporal David McGuinn, a correctional officer at the facility. In February 2012, Lee Stephens, one of the inmates charged, was found guilty of first degree murder. Prosecutors sought the death penalty pursuant to the restrictions in Chapter 186 of 2009. However, a jury sentenced Stephens to life without the possibility of parole. The other inmate charged faces a hearing in April to decide whether he is competent to stand trial.

According to reports, during the same summer that Corporal McGuinn was killed, three inmates died in Maryland correctional facilities from inmate-on-inmate attacks.

State Fiscal Effect: Prosecutions, defenses, and appellate proceedings attributable to capital cases are far more costly than litigation for other criminal cases. The State entities that would be directly affected by the expansion of the death penalty in certain limited cases include the Judiciary, the Office of the Attorney General (OAG), Office of the Public Defender (OPD), and DOC in DPSCS.

The Office of the Public Defender

OPD has historically advised that the annual cost of litigating capital cases is approximately \$1.9 million. If the same cases are tried as noncapital cases, the cost to the office is approximately \$650,000. However, these figures account for all death penalty cases, whereas the impact of the bill is limited to death penalty cases that (1) are committed by a defendant while the defendant is confined in a correctional facility; and (2) would not be eligible for the death penalty because of a lack of biological/DNA evidence, a videotaped confession, or a video recording conclusively linking the defendant to the murder. Though the number of cases fitting these criteria cannot be definitively predicted, it is assumed that the bill will apply to a small number of cases that do not occur on a regular basis, but instead emerge sporadically through the years.

Department of Public Safety and Correctional Services

In June 2010, DOC transferred Maryland's five death row inmates from the Maryland Correctional Adjustment Center to the North Branch Correctional Institution (NBCI) in Allegany County. DOC advises that due to the reduced overhead at NBCI, the cost to maintain a death row inmate at NBCI is comparable to the cost of maintaining a maximum security inmate at NBCI. The annual cost (including overhead) to maintain an inmate at the facility is approximately \$35,000 per year. Considering that three of Maryland's five death row inmates have been incarcerated for over 26 years, the bill's changes to the death penalty statute are expected to have a negligible effect on the budgetary needs or operations of DOC.

Judiciary and Office of the Attorney General

The Judiciary would experience an increase in appeals but would not experience a significant fiscal or operational impact as a result. The resulting increase in appeals would also impact OAG. However, given the number of cases affected by the bill, the increase in the number of appeals is not expected to have a material effect on OAG expenditures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, *The Baltimore Sun*, Department of Legislative Services

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Analysis by: Amy A. Devadas

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