

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 235
Judiciary

(Delegate K. Kelly, *et al.*)

Criminal Law - Death Penalty - Law Enforcement Officers and Correctional Officers

This bill reinstates the death penalty for (1) the first degree murder of a “law enforcement officer” or a “correctional officer” while the officer was performing the officer’s duties or (2) the first degree murder of an off-duty law enforcement officer or an off-duty correctional officer arising out of the victim’s employment as a law enforcement officer or correctional officer. The bill also makes corresponding changes to statute to reflect reinstatement of the death penalty in these cases.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for litigation-related expenses for the Office of the Public Defender (OPD) and the Office of the Attorney General (OAG). The bill is not expected to materially affect the finances of the Judiciary or the Department of Public Safety and Correctional Services (DPSCS).

Local Effect: Given the relatively few number of cases to which the bill applies, the bill is not expected to materially impact State’s Attorneys’ offices or local government finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines a “law enforcement officer” as a law enforcement officer, as defined by the Law Enforcement Officers’ Bill of Rights under § 3-101 of the Public Safety Article. Under that statutory provision, “law enforcement officer” means

an individual who (1) in an official capacity is authorized by law to make arrests and (2) is a member of one of a list of specified law enforcement agencies. Individuals who meet specified criteria are excluded from the definition of “law enforcement officer” under § 3-101 of the Public Safety Article.

“Law enforcement officer” includes (1) a law enforcement officer of a jurisdiction outside the State; (2) an officer serving in a probationary status; (3) a parole and probation officer; and (4) a law enforcement officer while privately employed as a security officer or special police officer under Title 3, Subtitle 3 of the Public Safety Article if the law enforcement officer is wearing the uniform worn while acting in an official capacity or is displaying prominently the officer’s official badge or other insignia of office.

Under the bill, a “correctional officer,” as defined in § 8-201 of the Correctional Services Article, is a member of a correctional unit whose duties relate to the investigation, care, custody, control, or supervision of inmates and individuals who have (1) been placed on parole or mandatory supervision; (2) been placed on probation; or (3) received a suspended sentence. “Correctional officer” does not include (1) the head or deputy head of a correctional unit or (2) a sheriff, warden, or superintendent or an individual with an equivalent title who is appointed or employed by a unit of government to exercise equivalent supervisory authority.

Current Law: A person convicted of first degree murder may be punished by imprisonment for life, with or without the possibility of parole. Chapter 156 of 2013 repealed the death penalty in Maryland and made corresponding changes to applicable statutory provisions.

State Fiscal Effect: The bill is not expected to materially affect the finances of the Judiciary or DPSCS. Minimal increase in litigation-related expenditures for OPD and OAG.

The Judiciary advises that the bill is not expected to significantly change the Judiciary caseloads.

The Department of State Police advises that the bill’s impact relates to enforcement only and does not materially affect the department’s finances.

OPD advises that the bill significantly impacts OPD; however, it is too speculative to determine the fiscal and/or operational impact on the agency. However, the Department of Legislative Services advises that litigation-related expenditures for OPD increase minimally as result of the bill given (1) the relatively few number of cases to which the bill’s provisions apply and (2) the maintenance of OPD personnel before and after the death penalty repeal.

Following changes to the death penalty statute during the 2009 legislative session, OPD's Capital Defense Division was disbanded as a separate program in fiscal 2010 and renamed the Aggravated Homicide Division (AHD). AHD is under the umbrella of OPD District Operations. At that time, AHD provided (1) direct trial representation to clients who faced the death penalty and (2) instruction and support to all OPD attorneys statewide who represented persons charged with capital offenses. AHD also provided training, consultation, and resources to provide litigation support in all areas of representation. Following the repeal of the death penalty in 2013, OPD did not eliminate personnel; AHD personnel were absorbed into other functions and continue to litigate high-level homicide cases.

DPSCS has historically advised that due to the reduced overhead at North Branch Correctional Institution (NBCI), the cost to maintain a death row inmate at NBCI is comparable to the cost of maintaining a maximum security inmate at NBCI.

OAG represents the State in appeals in capital cases. Given the relatively few cases to which the bill applies, general fund expenditures for OAG for litigation-related expenses increase minimally as a result of the bill.

Local Fiscal Effect: Baltimore County advises that it does not anticipate a significant fiscal impact from the bill. Carroll and Queen Anne's counties, the Montgomery County Police Department, and the Montgomery County Department of Correction and Rehabilitation all advise that the bill does not have a fiscal impact on their jurisdictions or agencies.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Montgomery, Queen Anne's, and St. Mary's counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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mc/kdm

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