

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 881  
Judiciary

(Delegate Malone, *et al.*)

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Criminal Law - Death Penalty - Law Enforcement Officers, Correctional  
Officers, and First Responders

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

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Fiscal Summary

**State Effect:** Significant increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS). 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.

**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.

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Analysis

**Bill Summary:** The bill defines a “law enforcement officer” as a law enforcement officer, as defined under § 3-101 of the Public Safety Article or a correctional officer under § 8-201

of the Correctional Services Article. Under § 3-101 of the Public Safety Article, “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.

Under § 8-201 of the Correctional Services Article, a “correctional officer” means a member of a correctional unit whose duties relate to the investigation, care, custody, control, or supervision of inmates and individuals who (1) have been placed on parole or mandatory supervision; (2) have been placed on probation; or (3) have 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.

“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.

The bill defines a “first responder” as a person engaged in providing emergency medical care or rescue services, including a firefighter, an emergency medical technician, or a rescue squad member.

**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 Expenditures:** The bill results in a significant increase in general fund expenditures for DPSCS. Litigation-related expenditures for OPD and OAG increase minimally.

DPSCS advises that the State’s current death chamber, located at the Metropolitan Transition Center in Baltimore City, has been decommissioned. According to the department, recommissioning the chamber may cost between \$200,000 and \$400,000, depending on the details of the project. Recommissioning the chamber requires approximately 1,000 square feet for viewing, cleaning and medical preparation, a holding cell, storage, death bed/chair space, and separate circulation areas for the inmate and public/staff. Additional expenditures include \$12,000 for an execution table and approximately \$2,000 for curtains, related hardware, and bleachers.

Furthermore, the department needs to update its protocols. Currently, DPSCS does not have death penalty protocols. DPSCS cannot provide an estimated cost for death penalty drugs until protocols have been adopted. Additional expenses may be incurred to train staff on the protocols and transport inmates from North Branch Correctional Institution (NBCI) in Cumberland to Baltimore City (unless a death chamber is constructed in Cumberland).

According to DPSCS, 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.

OPD advises that it cannot estimate the precise fiscal impact of the bill, but that the impact is significant. According to OPD, a capital case resulting in a death sentence costs approximately \$1.9 million more than a case in which the death penalty is not sought. OPD did not provide further information on the nature of these additional costs. The Department of Legislative Services advises that litigation-related expenditures for OPD increase minimally 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.

OAG represents the State in appeals of 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.

The bill is not expected to materially affect the finances of the Judiciary.

**Local Expenditures:** 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.

The Office of the Baltimore City State's Attorney advises that it already prosecutes these cases as homicides, and imposition of the death penalty does not change the office's decision to prosecute or its approach to the case.

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### **Additional Information**

**Prior Introductions:** SB 656 of 2016, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. HB 235 of 2014, another similar bill, received an unfavorable report from the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Baltimore City; Governor's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Health and Mental Hygiene; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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