

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 887
Judiciary

(Delegate Shoemaker, *et al.*)

Criminal Law - Death Penalty - Murder of Specific Individuals or Mass Murder

This bill reinstates the death penalty for the (1) first-degree murder of a “law enforcement officer,” a “correctional officer,” a “first responder,” or a “witness” or (2) the commission of a first-degree murder that is a “mass murder,” defined as a crime in which three or more victims were slain in one event, in one location. The bill also makes corresponding changes to statute to reflect reinstatement of the death penalty in these cases. The provisions reflect the death penalty statutes as they existed prior to repeal of the death penalty in 2013.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$25,000 in FY 2019 to purchase equipment. General fund expenditures further increase minimally to litigate death penalty cases; the frequency and timing of these cases cannot be reliably predicted. Revenues are not affected.

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, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines a “law enforcement officer” as an individual 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 State and local 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.

A “first responder” is a firefighter, an emergency medical technician, or a rescue squad member.

A “witness” is a person who is or expects to be a witness for the State in a criminal trial.

Current Law/Background: 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: General fund expenditures increase by at least \$25,000 in fiscal 2019 only for the Department of Public Safety and Correctional Services (DPSCS) to purchase equipment. General fund expenditures also increase minimally for the Office of the Attorney General (OAG) and the Office of the Public Defender (OPD) for litigation-related expenditures in death penalty cases. The frequency and timing of such cases cannot be reliably predicted.

According to DPSCS, the death chamber space is still intact at the Metropolitan Transition Center Hospital and costs for lethal injection-related equipment are as much as \$25,000. DPSCS advises that most states with capital punishment are going to a single-dose injection system, which can cost up to \$20,000 per injection and may be extremely difficult to find. This analysis assumes the cost associated with each injection is incurred on an as-needed

basis. DPSCS advises that, due to 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. The annual cost (including overhead) to maintain an inmate at the facility is approximately \$50,193. Accordingly, DPSCS expenditures related to housing inmates are not expected to be materially affected in the short term, particularly given Maryland's experience with death penalty cases.

Prior to repeal of the death penalty in 2013, there were five inmates on Maryland's death row. According to a 2013 report by the Death Penalty Information Center, Maryland had the seventh smallest death row population in the nation. The most recent execution in the State had been in December 2005, in part due to deliberations over lethal injection protocols.

OPD reports that a capital case resulting in a death sentence costs approximately \$3 million, which is \$1.9 million more than a case in which the death penalty is not sought. However, OPD's \$3 million figure includes \$1.3 million in prison costs, which are not the responsibility of the office. While the office contends that a death penalty case costs \$1.7 million to litigate, the office did not provide a breakdown of these costs, including information on how much of these costs are attributable to salaries for existing personnel and fixed costs that the office will incur regardless of whether it is litigating any death penalty cases.

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 will likely 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. AHD has been renamed as the Major Crimes and Complex Litigation Division and provides direct representation in homicides and other complex criminal litigation cases.

OAG represents the State in appeals of capital cases. Given the relatively few cases to which the bill is likely to apply, general fund expenditures for OAG for litigation-related expenses increase minimally as a result of the bill. OAG advises that it needs

two additional Assistant Attorneys General to handle the additional workload generated by the death penalty cases and the bill's expedited review process. The Department of Legislative Services advises that due to the bill's limited application, the bill does not necessitate the hiring of additional OAG personnel. Furthermore, the bill does not establish an expedited review process. Instead, the bill authorizes the Court of Appeals to adopt rules of procedure for the expedited review of death sentences. The Court of Appeals had this authority under the death penalty statutes prior to the 2013 repeal.

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 Maryland State's Attorneys' Association advises that the bill has no effect on prosecutors.

Additional Information

Prior Introductions: Several bills with similar provisions have been introduced in prior sessions. SB 958 of 2017 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 656 of 2016 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 457 of 2015 and HB 235 of 2014 both received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore City; Montgomery County; City of Bowie; Office of the Attorney General; Department of Public Safety and Correctional Services; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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