

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 295 (Senator Salling, *et al.*)
Judicial Proceedings

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

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.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$14,000 in FY 2020 to purchase equipment. General fund expenditures further increase minimally to litigate death penalty cases and on an as-needed basis for injections; 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 specified 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.

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: General fund expenditures increase by at least \$14,035 in fiscal 2020 only for the Department of Public Safety and Correctional Services (DPSCS) to purchase equipment. General fund expenditures for DPSCS increase minimally on an as-needed basis for injections. 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, and costs for lethal injection-related equipment are at least \$14,035, which does not include the cost of additional technology, training, injections, or transportation costs. 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. It should be noted that Maryland’s former death row population is now housed at NBCI, which does not have a death chamber. DPSCS advises that the cost to build a new death chamber at NBCI is \$400,000.

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.

According to OPD, death penalty cases require the office to hire mental health experts, mitigation experts, and/or social workers, the cost of which vary by case and cannot be reliably determined at this time. OPD advises that the bill may require reorganization of personnel, costs associated with experts, and other litigation-related expenses, which cannot be reliably determined at this time.

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 what portion of these costs is 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 (DLS) 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. According to OAG, implementation of the bill requires an additional two assistant Attorneys General and a part-time paralegal, with costs ranging from \$292,460 in fiscal 2020 to \$395,316 in fiscal 2024. According to OAG, in 2006, the office's death penalty staff had been reduced to 1.5 attorneys and was further reduced to 1 attorney shortly thereafter. The former staff was assigned to Criminal

Appeals Division work as a result of reduced death penalty-related litigation. Given the relatively few cases to which the bill is likely to apply, DLS does not concur with OAG's assessment of the need for staffing at a level in excess of staffing levels that existed seven years before the repeal of the death penalty (which applied to all eligible murder cases, regardless of the victim). As previously noted, much like the situation at OPD, OAG's death penalty attorneys were shifted to the Criminal Appeals Division. Thus, OAG expenditures 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 Maryland State's Attorneys' Association advises that the bill has no effect on prosecutors. Baltimore County advises that due to the infrequency of cases, it can litigate cases with existing resources. Anne Arundel County advises that the bill has a minimal fiscal impact and can be absorbed with existing resources.

Additional Information

Prior Introductions: SB 816 of 2018 received a hearing in the Senate Judicial Proceedings Committee. No further action was taken. SB 958 of 2017 received a hearing in the Senate Judicial Proceedings Committee. No further action was taken. SB 656 of 2016, a substantially similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. HB 235 of 2014, a similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, and Montgomery counties; Office of the Attorney General; Governor's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2019
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