

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 937
Judiciary

(Delegate Arian, *et al.*)

Criminal Law – Attempted Second-Degree Murder – Penalty

This bill increases the maximum term of imprisonment for attempted second-degree murder from 30 years to 40 years.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finance and operations.

Local Effect: The bill is not expected to materially affect local finances and operations.

Small Business Effect: None.

Analysis

Current Law:

First-Degree Murder

A murder is in the first degree if it is (1) a deliberate, premeditated, and willful killing; (2) committed by lying in wait; (3) committed by poison; or (4) committed in the perpetration of or an attempt to perpetrate specified crimes. A violator is guilty of a felony punishable by imprisonment for life, with or without the possibility of parole. A sentence of imprisonment for life without the possibility of parole may not be imposed unless specified statutory and procedural requirements are met.

Attempted First-degree Murder

An attempt to commit murder in the first degree is a felony punishable by imprisonment not exceeding life.

Second-Degree Murder

Second-degree murder is a murder that is not in the first degree. A person who commits second-degree murder is guilty of a felony and on conviction is subject to imprisonment for up to 40 years.

The Maryland Court of Appeals (now the Supreme Court of Maryland) determined that second-degree murder is a killing accompanied by any of at least three alternative states of mind:

killing another person (other than by poison or lying in wait) with the intent to kill, but without the deliberation and premeditation required for first degree murder; killing another person with the intent to inflict such serious bodily harm that death would be the likely result; and what has become known as depraved heart murder – a killing resulting from ‘the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.

Burch v. State, 346 Md. 253, 274 (1997) (quoting *Robinson v. State*, 307 Md. 738, 744 (1986), quoting from *DeBettencourt v. State*, 48 Md. App. 522, 530 (1981)).

Attempted Second-degree Murder

An attempt to commit second-degree murder is a felony punishable by imprisonment for up to 30 years.

To prove attempted murder in the second degree, the State must show that the defendant had a specific intent to kill; an intent by the defendant to commit grievous bodily harm is insufficient. *See Wallace v. State*, 475 Md. 639, 657 (2021).

Additional Comments: The Maryland State Commission on Criminal Sentencing Policy advises that it received information for 50 individuals sentenced for 57 counts of attempted second-degree murder in the State’s circuit courts during fiscal 2022. The Department of Public Safety and Correctional Services advises that it received 16 individuals with one or more attempted second-degree murder offenses during fiscal 2022. The average length of sentence for this group was 12.88 years; the median sentence for this group was 10 years,

to which 10 inmates were sentenced. Only one inmate was given the maximum sentence of 30 years.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): 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

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