

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1308 (Delegate Moon, *et al.*)
 Judiciary

Criminal Law – Felony First–Degree Murder – Limitation and Review of Conviction

This bill alters the definition of first-degree murder as it applies to felony murder by specifying that only a murder committed by *a principal in the first degree* in the perpetration of or an attempt to perpetrate specified offenses can be considered first-degree murder. The bill authorizes specified persons convicted of murder in the first degree to apply for review of the conviction. The bill also establishes the Task Force to Study Felony Murder for Principals in the First Degree. **The bill’s provisions related to the task force take effect June 1, 2020, and terminate June 30, 2022.**

Fiscal Summary

State Effect: General fund expenditures for the Office of the Public Defender (OPD) increase by \$330,000 in FY 2021; future years reflect annualization and ongoing costs. Potential increase in operating expenditures for the Judiciary. Task force reimbursements and staffing can be absorbed within existing budgeted resources. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	330,000	367,900	378,100	390,800	404,000
Net Effect	(\$330,000)	(\$367,900)	(\$378,100)	(\$390,800)	(\$404,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Increased workloads for State’s Attorneys. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Reviews of Convictions

Notwithstanding any other provision of law, a person who was convicted on or before September 30, 2020, of first-degree murder under the felony murder provision contained in § 2-201(a)(4) of the Criminal Law Article and who was not the principal in the first degree may apply *once* for review of the person's conviction at any time while incarcerated or under supervision. The court must notify the State's Attorney that it has received an application.

After a hearing and consideration of all the evidence, if the court does not find *beyond a reasonable doubt* that the applicant could be found guilty of first-degree murder on or after October 1, 2020, the court may vacate the conviction, resentence the applicant, grant a new trial, or correct the sentence as the court considers appropriate. The court is prohibited from increasing the sentence of an applicant.

Task Force to Study Felony Murder for Principals in the First Degree

The bill establishes the Task Force to Study Felony Murder for Principals in the First Degree, establishes the membership of the task force, and requires the Department of Legislative Services (DLS) to provide staff for the task force. Task force members may not receive compensation but are entitled to reimbursement for expenses.

The task force must (1) review the provisions, penalties, and jurisprudence in the State for felony murder as it applies to principals in the first degree; (2) study the provisions, penalties, and jurisprudence in other states for felony murder; and (3) make specified recommendations regarding the existing statutory scheme for felony murder as it applies to principals in the first degree throughout the Maryland Code.

The task force must report its findings and recommendations to the Governor and the General Assembly by December 31, 2021.

Current Law: 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 the specified offenses, including among others, first-degree arson; first-, second-, and third-degree burglary; kidnapping; carjacking; rape; or mayhem. A violator is guilty of a felony and on conviction must be sentenced to 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.

A principal in the first degree is the actual perpetrator of a crime. A principal in the second degree is a person who helped the perpetrator at the time of the crime but did not commit the crime with his/her own hands.

Under the common law theory of felony murder, a homicide arising in the perpetration of, or in the attempt to perpetrate, a felony is murder whether death was intended or not. Under this theory, the commission of or attempt to commit the underlying felony is sufficient to supply the element of malice required for a charge of murder.

Background: According to the Judiciary, there were 1,076 convictions for murder in the first degree during fiscal 2011 through 2019, as shown in **Exhibit 1**. The Judiciary advises that these numbers include *all* reported convictions for murder in the first degree, since it is currently impossible to distinguish felony-murder convictions as separate and distinct from other convictions for murder.

Exhibit 1
Murder in the First Degree (§ 2-201 of the Criminal Law Article) Convictions
Fiscal 2011-2019

<u>Fiscal Year</u>	<u>Guilty Convictions</u>
2011	101
2012	112
2013	108
2014	101
2015	130
2016	151
2017	128
2018	121
2019	124
Total	1,076

Source: Maryland Judiciary

State Expenditures: General fund expenditures for OPD increase by \$329,968 in fiscal 2021 and increase to \$403,950 by fiscal 2025. General fund operating expenditures for the Judiciary may also increase. Any expense reimbursements for the task force are

HB 1308/ Page 3

assumed to be minimal and absorbable within existing budgeted resources. DLS can provide staff for the task force with existing budgeted resources.

Office of the Public Defender

General fund expenditures for OPD increase by \$329,968 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring six contractual attorneys to assist existing personnel in case file review, review of applications, and litigation of motions under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- a significant percentage of those currently incarcerated for first-degree murder will apply for review of conviction under the bill; and
- based on information provided by OPD, each contractual attorney is able to handle 30 to 50 affected cases each year.

Contractual Positions	6
Salaries and Fringe Benefits	\$297,770
Operating Expenses	<u>32,198</u>
Total FY 2021 OPD Expenditures	\$329,968

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses through fiscal 2025. It is assumed that the need for additional personnel terminates on June 30, 2025, reflecting the likelihood that most cases will have been reviewed by then and/or can be handled with existing personnel.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Judiciary

The bill may increase operating expenditures for the Judiciary. The Judiciary advises that the bill (1) may have a significant impact on resources, especially if several applications are filed in a short amount of time and (2) may result in the need to utilize senior judges to address the temporary increase in judicial workload. As previously noted, data on the number of individuals convicted of first-degree murder under the felony murder provision cannot be reliably determined without a review of individual case files. The Judiciary advises that given this lack of information, any application received will need to be reviewed to determine if the conviction was under the felony murder provision. Additional

significant judicial resources may also be expended to conduct hearings on applications and evaluate all evidence using a reasonable doubt standard.

Department of Public Safety and Correctional Services

This estimate does not address any potential reduction in incarceration expenditures for the Department of Public Safety and Correctional Services resulting from the bill. The bill results in decreased incarceration expenditures to the extent that (1) the bill decreases the number of individuals serving sentences for first-degree murder in the future and (2) individuals experience a reduction in incarceration time in response to an application for review of conviction filed under the bill. Any reduction in incarceration expenditures depends on the number of individuals to whom the bill applies, judicial actions on applications filed under the bill, and sentences for other offenses being served by individuals affected by the bill, all of which can only be determined with actual experience under the bill.

Local Expenditures: Workloads for State's Attorneys' offices increase, especially in jurisdictions with a high volume of first-degree murder cases.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 919 (Senator Carter) - Judicial Proceedings.

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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