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Md. legislators on standby as murder sentencing scheme faces constitutional challenge

By: Heather Cobun Daily Record Legal Affairs Writer March 20, 2016

Since lawmakers repealed the death penalty in 2013, life in prison without the possibility of parole has bec most severe criminal penalty an individual can face in Maryland. Unlike the death penalty, however, life wit parole has no standards prosecutors must meet other than a defendant must be convicted of first-degree r

A bill before the General Assembly would fix what proponents say is a constitutionally defective portion of Maryland's criminal sentencing law, although even the bill's sponsor acknowledges the legislation is unlikel out of committee.

But an appellate court ruling could force the legislature's hand by next session.

House Bill 757 proposes reviving the sentencing scheme applied to death penalty cases for life without par statute would narrow the class of offenders to those who were a principal in the first degree or, if the victi law enforcement officer, an accomplice who was a major participant and present. It also requires either bi evidence, a videotaped confession or a video recording conclusively linking the defendant to the murder.

The bill also clarifies a point of confusion leftover from when the death penalty was included in the law by a jury sentencing if the state is seeking life without parole.

"I think the sound public policy, since this is now the most serious penalty for the most serious crimes, is t adopt the most serious standards both for conviction then also for determining the sentence," said Del. Sa Rosenberg, D-Baltimore, the bill's sponsor.

The bill was discussed by the House Judiciary Committee on March 10 with support from the Maryland Offi Public Defender and ACLU of Maryland. No formal action has been taken by the committee as of Friday, bu Rosenberg said the bill will not make it out of committee, which he expected when he proposed it.

"The bill's not going to pass this year," he said. "This began the discussion."

Constitutional challenges

One major factor for not moving the bill forward was a group of cases before the Court of Special Appeals challenging the constitutionality of the life-without-parole sentencing scheme. Six cases addressing the issu been consolidated for argument in May, although a formal schedule has yet to be released.

The briefs in each case essentially make the same arguments, according to Brian Saccenti, chief attorney f public defender's appellate division.

"The death penalty got a lot of attention – and rightly so – when we had it because it is such a terrible penalty. But in some ways, the death penalty and life without parole… are very similar," he said.

One brief cites several cases that reference the similarities, including the judgment that the defendant is in some way irredeemable and, absent executive clemency, the fact that the defendant has no hope of release.

"They are going to, one day, die in prison if that sentence is maintained," Saccenti said.

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Sandy Rosenberg, D-Baltimo is sponsoring a bill that wo standards prosecutors must order for a criminal defendar life without the possibility of (File)

Life without parole is an enhanced penalty, according to Katy C. O'Donnell, chief attorney for the public defender's aggravated homicide division, and the Supreme Court ruled in 2000 that an enhanced penalty can only be imposed after a jury finds certain predicate factors exist.

"What we have now is a situation where the greatest penalty that our state can mete out is surrounded by a framework that is completely constitutionally not sanctioned," she s March 10 hearing.

The cases on appeal cite Court of Appeals holdings that life without parole is an enhanced sentence, and d process demands the eligible class of offenders and offenses be declared and any factors that need to be p found by a jury beyond a reasonable doubt.

David Nitkin, a spokesman for the Maryland Office of the Attorney General, said attorneys representing the have filed or are preparing response briefs in the cases.

"The statute authorizing prosecutors to seek a sentence of life without parole for the crime of first-degree constitutional, and we are confident that challenges to the statute will be rejected by the appellate courts," in an email.

The appeals also address an area of confusion among the state's circuit courts: whether a defendant facin without parole has a right to jury sentencing.

The public defender's office claims a series of statutes require jury sentencing for life without parole. It arg legislation introduced last year captioned "Life Without Parole – Jury Sentencing Repeal" indicates lawmake believe the right currently exists. That legislation failed, which should not have been the case if it were me corrective measure, according to the public defender's brief.

"Do they really believe on one of the most high-profile issues of that session, the legislature somehow did the legislation?" Saccenti asked. "I guess I'm not cynical enough to believe [that]."

Opponents claim the language is left over from when the death penalty was the most severe sentence, an continued existence was a legislative oversight.

Prosecutors' discretion

Prosecutors opposed the bill in part because of the high requirements imposed on the state to seek and re life-without-parole sentence and questioned why defense attorneys never challenged the sentencing schem the death penalty repeal.

"Lawyers always attack the highest sentence," Baltimore County State's Attorney Scott Shellenberger said, that the constitutionality of life without parole was never previously questioned.

Shellenberger, speaking on behalf of the Maryland State's Attorneys' Association, told the House committe this month that life without parole is not an enhanced punishment but rather the maximum sentence allow law.

Del. Curt Anderson, D-Baltimore, asked Shellenberger what factors the prosecutor considers when decidin to file a notice of intent to seek life without parole. Shellenberger said he does what Maryland permits him which is use his discretion and good judgment.

"It would seem to me that there ought to be some rational basis upon which your discretion is based so th a public would have some expectation as to when this is going to happen," Anderson replied.

Rosenberg said he hopes to have an opportunity to work with interested parties to craft a statute addressi policy concerns.

"I will certainly look forward to discussing this with OPD and the state's attorneys after a decision is hande by the Court of Special Appeals," he said.

Even if courts determine the sentencing scheme is constitutional, Rosenberg said he will advocate for polic
to the life-without-parole sentence.

"We can provide greater protection, statutorily, for individuals than the Constitution requires us to do," he

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