

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 278

(The Speaker, *et al.*) (By Request - Office of the State
Prosecutor)

Judiciary

Criminal Law - Misconduct in Office

This bill expands the meaning of “public official,” as it applies to the common law crime of misconduct in office, to include a local official or public official as defined under the Maryland Public Ethics Law. The bill also prohibits a person from committing two or more acts constituting misconduct in office under one scheme or continuing course of conduct. A violator is guilty of scheme of misconduct, a misdemeanor punishable by imprisonment for up to 10 years. The State may initiate a prosecution for this offense at any time.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill’s penalty provision. Revenues are not affected.

Local Effect: Minimal increase in local expenditures due to the bill’s penalty provision. Local revenues are not expected to be materially affected.

Small Business Effect: None.

Analysis

Current Law:

Definitions under the Maryland Public Ethics Law

Public official: “Public official,” as it applies to the Maryland Public Ethics Law, means an individual determined to be a public official under § 5-103 of the General Provisions

Article and includes specified individuals in the Executive, Legislative, and Judicial branches.

Generally, an individual in an executive unit is a public official upon a determination by the State Ethics Commission (SEC) in accordance with specified criteria pertaining to the individual's compensation, decision-making authority, and/or advisory role to an individual with decision-making authority. An individual in the Legislative Branch is a public official if the individual receives specified compensation and is so designated by order of the Presiding Officers of the General Assembly. Generally, an individual in the Judicial Branch is a public official if the individual receives specified compensation.

Local official: "Local official" means an official, officer, or employee of a county or municipal corporation that the governing body of the county or municipal corporation determines is subject to provisions of the Maryland Public Ethics Law applicable to local governments.

Misconduct in Office

In Maryland, misconduct in office is a common law misdemeanor and has been defined as corrupt behavior by a public officer while in the exercise of official duties or while acting under color of law. *Duncan v. State*, 282 Md. 385, 384 A.2d 456 (1978); *Chester v. State*, 32 Md. App. 593, 363 A.2d 605 (1976). "Public officer" has been defined to include anyone employed by or holding appointment under the government. *Chester* at 606, quoting Hochheimer, *The Law of Crimes and Criminal Procedure*, § 383 (2d ed. 1904).

To convict a defendant of misconduct in office, the State must prove that the defendant (1) was a public officer; (2) acted in his or her official capacity or took advantage of his or her office; and (3) corruptly did an unlawful act, corruptly failed to do an act required by the duties of his or her office, or corruptly did a lawful act.

Statute of Limitations

In general, there is a one-year statute of limitations for the prosecution of a misdemeanor. However, State law contains exceptions for several specified offenses. A prosecution for the commission of or attempt to commit a misdemeanor constituting (1) a criminal offense under the Maryland Public Ethics Law or (2) criminal malfeasance, misfeasance, or nonfeasance in office is subject to a two-year statute of limitations.

Background: The bill is similar to a New Jersey statute that provides for the crime of pattern of official misconduct. Under New Jersey law, a person is guilty of the crime of pattern of official misconduct if he or she commits two or more acts in violation of specified official misconduct or official deprivation of civil rights offenses.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,700 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The State Prosecutor's Office advises that the bill is not likely to have an immediate fiscal impact on the office but that an additional prosecutor may be needed if the bill results in a significantly higher volume of cases. However, the Department of Legislative Services anticipates any increase in the office's case load to be minimal and absorbable within existing budgeted resources.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 200 (The President)(By Request - Office of the State Prosecutor) - 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; State Prosecutor’s Office; Department of Public Safety and Correctional Services; State Ethics Commission; Maryland Municipal League; *Maryland Criminal Pattern Jury Instructions and Commentary* (2d ed. 2018.); Department of Legislative Services

Fiscal Note History: First Reader - January 27, 2020
md/lgc

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