

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 797
Judiciary

(Delegate McConkey, *et al.*)

Officers of the Court - Criminal Offenses - Reporting and Investigation

This bill requires that if during the consideration of a complaint, the Commission on Judicial Disabilities or the Attorney Grievance Commission finds that there are reasonable grounds to believe that an officer of the court may have committed a criminal offense, the matter must be referred to the Office of the State Prosecutor (OSP) for investigation. Both commissions are required to make available to OSP all pertinent evidence under their control. The bill expands the authority of OSP to include the investigation of criminal offenses alleged to have been committed by an officer of the court.

Fiscal Summary

State Effect: Since it is assumed that this bill will apply in a limited number of cases, OSP can handle any increase in caseload using existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: The Commission on Judicial Disabilities was established by an amendment to the Maryland Constitution in 1966. The commission investigates complaints against any judge of the Court of Appeals, Court of Special Appeals, circuit courts, District Court, or orphans' courts. The commission may recommend to the Court of Appeals the removal, censure, or other appropriate disciplining of a judge. Article IV, § 4B specifies that all proceedings, testimony, and evidence before the

commission must be confidential and privileged, unless otherwise provided by rule of the Court of Appeals. Maryland Rule 16-810 states that all proceedings relating to the investigation of a complaint against a judge are confidential.

The Attorney Grievance Commission oversees the conduct of both Maryland lawyers and nonmembers of the Maryland Bar who engage in the practice of law in the State. The commission investigates and, where indicated, prosecutes attorneys whose conduct violates the Maryland Lawyers Rules of Professional Conduct as well as those engaged in the unauthorized practice of law. In fiscal 2009, the commission received 20 complaints alleging criminal conduct; in fiscal 2010, 14 such complaints were received.

OSP is an independent Executive Branch agency. The State Prosecutor investigates and prosecutes certain criminal offenses committed by public officials. OSP conducts these investigations on its own initiative or at the request of the Governor, the Attorney General, the General Assembly, the State Ethics Commission, or a State's Attorney. OSP investigates the following types of cases: criminal offenses under the State election and public ethics laws; violations of the State bribery laws in which a public official or employee was offered or solicited a bribe; criminal malfeasance, misfeasance, or nonfeasance in office committed by a public officer or employee; and violations of State obstruction of justice, perjury, and extortion laws.

State Fiscal Effect: For purposes of this analysis, it is assumed that the number of complaints alleging criminal conduct will remain relatively constant (15-20 per year) and can be handled with the existing resources of OSP. However, if the number of complaints increases significantly from this number, OSP will need an additional investigator to handle the increased workload. *For illustrative purposes only*, general fund expenditures would increase by at least \$80,000 annually to hire an additional investigator, which includes salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Additional Information

Prior Introductions: SB 1102 of 2010 was referred to the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 33 (Senator Reilly) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State Prosecutor's Office, Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2011
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