

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 364
Judiciary

(Delegate Dumais)

Judicial Proceedings

State Prosecutor and Deputy State Prosecutor - Witness Immunity - Compulsory
Testimony

This bill expands the definition of “prosecutor” to include the State Prosecutor or Deputy State Prosecutor under provisions of law relating to compulsory witness testimony and witness immunity.

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Office of the State Prosecutor (OSP) or the Judiciary.

Local Effect: The bill does not materially impact the workload of the circuit courts.

Small Business Effect: None.

Analysis

Current Law: A “prosecutor” means (1) the State’s Attorney for a county; (2) a deputy State’s Attorney; (3) the Attorney General of the State; or (4) a deputy Attorney General or a designated assistant Attorney General.

A prosecutor seeking to compel an individual to testify or provide other information must request, by written motion, that the court issue an order compelling the testimony or the information when the prosecutor determines that (1) the testimony or other information from the individual may be necessary to the public interest and (2) the individual has refused or is likely to refuse to testify or provide other information on the basis of the individual’s privilege against self-incrimination. If an individual has been, or may be, called to testify or provide other information in a criminal prosecution or a proceeding

before a grand jury, the court must issue, on request of the prosecutor, an order requiring the individual to give testimony or provide other information which the individual has refused to give or provide on the basis of the individual's privilege against self-incrimination.

If the court has issued an order for a witness to testify or provide information, the witness may not refuse to comply with the order based on the privilege against self-incrimination. No testimony or other information compelled under the order and no information directly or indirectly derived from the testimony or information may be used against the witness in a criminal case, except in a prosecution for perjury, obstruction of justice, or otherwise failing to comply with the order. If a witness refuses to comply with the order, on written motion of the prosecutor and on admission into evidence of the transcript of the refusal, if the refusal was before a grand jury, the court must treat the refusal as a direct contempt and proceed in accordance with procedures established in the Maryland Rules.

Background: 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: (1) criminal offenses under the State election and public ethics laws; (2) violations of the State bribery laws in which a public official or employee was offered or solicited a bribe; (3) criminal malfeasance, misfeasance, or nonfeasance in office committed by a public officer or employee; and (4) violations of State obstruction of justice, perjury, and extortion laws.

Additional Information

Prior Introductions: None.

Cross File: Although not designated as a cross file, SB 224 (Senator Raskin, *et al.* – Judicial Proceedings), is identical.

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

Fiscal Note History: First Reader - January 31, 2014
mm/kdm

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