

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 137

(Senator Cassilly, *et al.*)

Judicial Proceedings

Crimes - Solicitation to Commit Crimes - Statute of Limitations

This bill establishes that the statute of limitations for the prosecution of the crime of solicitation to commit any of a list of specified crimes is the statute of limitations for the prosecution of the substantive crime that is the subject of the solicitation. The specified crimes are (1) murder (first- or second-degree); (2) assault (first- or second-degree); (3) rape (first- or second-degree); and (4) arson (first- or second-degree).

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures if the bill's increase in the statute of limitations for solicitation results in an increase in the number of fines imposed in District Court cases and an increase in State incarceration expenditures.

Local Effect: Minimal increase in local revenues from fines imposed in circuit court cases. Given the maximum penalties for the underlying offenses listed in the bill, it is unlikely that the bill materially affects local incarceration expenditures.

Small Business Effect: None.

Analysis

Current Law: Under the common law, solicitation involved urging, advising, or otherwise inciting another person to commit a crime. Solicitation, like an attempt to commit a crime or a conspiracy to commit a crime, is referred to as an "inchoate" crime. Inchoate crimes reflect steps taken toward the commission of another crime (the substantive crime), that are serious enough that they are considered criminal behavior worthy of punishment.

In general, prosecution for a misdemeanor must be instituted within one year after the offense was committed. However, if a statute establishes that a misdemeanor is punishable by confinement in the penitentiary, the State may institute a prosecution for the misdemeanor at any time. Under the common law, solicitation is a misdemeanor regardless of whether the substantive crime that is the basis of the solicitation is a misdemeanor or felony. There is no statute of limitations for a felony.

With the exception of a second-degree assault committed other than when the defendant knew or had reason to know that the victim was a law enforcement officer or parole or probation agent engaged in the performance of the officer/agent's official duties, all of the crimes listed in the bill are felonies.

Current law specifies that the statute of limitations for the prosecution of the crime of conspiracy is the statute of limitations for the prosecution of the substantive crime that is the subject of the conspiracy.

Background: The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that it received sentencing information for two people sentenced in the State's circuit courts during fiscal 2014 for solicitation to commit first-degree murder. MSCCSP's database does not reflect anyone receiving a sentence during fiscal 2014 for solicitation to commit the other offenses listed in the bill.

State Fiscal Effect: Inchoate crimes are generally common law crimes. However, some inchoate crimes (*e.g.*, attempted murder, rape, sexual offense, and robbery) have been made statutory felonies. The maximum penalty for an attempt or conspiracy to commit a crime is the maximum penalty for the crime that is the subject of the attempt or conspiracy. Assuming that the same maximum penalty applies to solicitation, which is the remaining inchoate crime, to the extent that the bill's increase in the statute of limitations increases the number of convictions for solicitation, the bill results in increased general fund revenues from fines imposed in District Court cases and increased general fund expenditures for incarcerations in State facilities.

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 \$3,100 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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