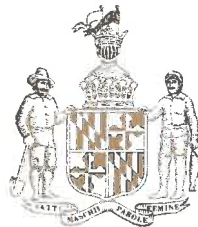


BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATROCKI
DEPUTY ATTORNEY GENERAL



SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

October 10, 2019

The Honorable Robin L. Grammer, Jr.
Maryland House of Delegates
307 House Office Building
Annapolis, Maryland 21401

Dear Delegate Grammer:

You have inquired about who has standing to press criminal charges against a person who commits a littering or dumping offense under § 10-110 of the Criminal Law Article (“CR”). Typically, statements of charges or criminal citations for a littering offense are issued by law enforcement officers. However, any individual may appear before and file a written application and affidavit with a District Court commissioner for a statement of charges for a littering offense, if such an application demonstrates probable cause for a violation.

You have also inquired what constitutes a “unit that supervises State property[,]” which is responsible for maintaining receptacles for the disposal of litter and providing notice regarding littering violations under CR § 10-110(h). Although not specifically defined, a “unit” and “State property” in this context appear to relate to an entity that manages and maintains real property owned and operated by the State that is accessed by the public.

Under CR § 10-110(c), a person may not: (1) “dispose of litter on a highway or perform an act that violates the State Vehicle Laws regarding disposal of litter, glass, and other prohibited substances on highways; or” (2) “dispose or cause or allow the disposal of litter on public or private property unless:” (i) “the property is designated by the State, a unit of the State, or a political subdivision of the State for the disposal of litter and the person is authorized by the proper public authority to use the property; or” (ii) “the litter is placed into a litter receptacle or container installed on the property.”

A person who disposes of litter in an amount not exceeding 100 pounds and not for commercial gain is guilty of a misdemeanor that is subject to imprisonment not exceeding 30 days or a fine not exceeding \$1,500 or both. Littering in greater amounts or done for commercial gain is subject to enhanced criminal penalties. CR § 10-110(f). A municipal corporation in the State may enact its own littering ordinance as a municipal infraction, and Calvert, Prince George’s and Montgomery Counties may each enact county littering ordinances that impose criminal and civil penalties that do not exceed littering penalties under State laws. CR § 10-110(j). Compliance with

the State statute is enforced by “[a] law enforcement unit, officer, or official of the State or a political subdivision of the State, or an enforcement unit, officer, or official of a commission of the State, or a political subdivision of the State[.]” CR § 10-110(h).

Littering or dumping violations are typically charged by law enforcement officers through the issuance of a citation (for more minor violations) under § 4-101(c) of the Criminal Procedure Article, or by filing a statement of charges with the District Court either before or after an arrest. Md. Rule 4-211(b). A State’s Attorney may file a criminal information charging an alleged violator in the District or circuit court, depending on the violation. Rule 4-211(c). The circuit court may file a criminal indictment that is returned by a grand jury for a violation in the jurisdiction of the circuit court. Rule 4-211(d).

Any other person, however, may appear before a District Court judicial officer (District Court judge or commissioner) to allege and demonstrate that an offense has been violated. “[A] judicial officer may file a statement of charges in the District Court against a defendant who has not been arrested for that offense upon written application containing an affidavit showing probable cause that the defendant committed the offense charged.” Rule 4-211(b). If the application and affidavit are not executed by a law enforcement officer, “the affidavit shall be made and signed before a judicial officer.” *Id.* See e.g., District Court Form DC-CR-001. If a judicial officer finds probable cause for a violation, the officer shall issue a summons to the accused to appear in court, or may issue a warrant for the accused’s arrest under certain circumstances. Rule 4-212(b) and (d).

Although a private citizen or other non-law enforcement officer may apply for criminal charges under certain circumstances, such fact does not necessarily mean that the accused will be prosecuted for the offense. As the Court of Appeals has explained, the “function of a [District Court] commissioner in determining the existence of probable cause is only in connection with the issuance of a statement of charges and a warrant of arrest[.]” and a commissioner “has no control over the prosecution of an offense.” *State v. Smith*, 305 Md. 489, 514-15 (1986).

A criminal act “is an offense against the sovereign,” and as such “is brought in the name of the State of Maryland.” *Lopez-Sanchez v. State*, 388 Md. 214, 226 (2005). A State’s Attorney typically has the sole discretion whether to pursue a criminal prosecution against an offender. See *Brack v. Wells*, 184 Md. 86, 90 (1944) (“As a general rule, whether the State’s Attorney does or does not institute a particular prosecution is a matter which rests in [her or] his discretion. Unless that discretion is grossly abused or such duty compelled by statute or there is a clear showing that such duty exists, mandamus [to compel performance of official duty] will not lie.”).

As for your second inquiry as to what constitutes a “unit that supervises State property” responsible for maintaining receptacles for the disposal of litter and providing notice regarding littering violations under CR § 10-110(h), the undefined terms “unit” and “State property” as used in this context, appear to apply to a State entity that manages and maintains real property owned

The Honorable Robin L. Grammer, Jr.
October 10, 2019
Page 3

and operated by the State that is accessed by the public. Section 10-110(h) requires that “[a] unit that supervises State property shall:” (1) “establish and maintain receptacles for the disposal of litter at appropriate locations where the public frequents the property;” (2) “post signs directing persons to the receptacles and serving notice of the provisions of this section; and” (3) “otherwise publicize the availability of litter receptacles and the requirements of this section.”

The Revisor’s Note to CR § 10-110 under Chapter 26 of the 2002 Laws of Maryland, which was the nonsubstantive revision of CR § 10-110 from former Article 27, § 468, explains that “the references to a ‘unit’ of the State [in new CR § 10-110(h)] are substituted for the former references to ‘agencies’ of the State and State ‘authorit[ies].” The legislative history of the provision at issue appears to be consistent with the application of the receptacle and notice requirements to State entities that supervise public State property. The General Assembly originally enacted the precursor to CR § 10-110(h) (Art. 27 § 468(h)), in Chapter 106 of the 1971 Laws of Maryland, which provided as follows:

(h) All public authorities and agencies having supervision of properties of this State are authorized, empowered and instructed to establish and maintain receptacles for the deposit of litter at appropriate locations where such property is frequented by the public, and to post signs directing persons to such receptacles and serving notice of the provisions of this Act, and to otherwise publicize the availability of litter receptacles and requirements of this Act.

(Emphasis added).

In this context, the statute requires the placement and maintenance of trash receptacles on State property “where the public frequents,” along with posting and notice requirements regarding the law and the location of trash receptacles. Since the terms are not specifically defined, it likely becomes a fact question as to whether a particular State entity or State property location constitutes a “unit that supervises State property” that is subject to the requirements of subsection (h). Without more information, however, I am unable to assess whether any specific individual entity or location may be subject to the receptacle and notice requirements of CR § 10-110(h).

I hope this is responsive to your request. If you have any questions or need any additional information, please feel free to contact me.

Sincerely,



Jeremy M. McCoy
Assistant Attorney General