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June 28, 2023

The Honorable Thomas S. Hutchinson
Maryland House of Delegates
308 Lowe House Office Building
Annapolis, Maryland 21401
Via email

Dear Delegate Hutchinson:

You have asked whether a violation of § 10-404 of the Criminal Law Article (“CR”), involving the alleged destruction of gravestones and burial vault covers, is a misdemeanor offense that is subject to a one-year statute of limitations, or whether it constitutes a misdemeanor subject to imprisonment in the penitentiary, which carries no limitation period for commencing a prosecution. As a violation under CR § 10-404 is a misdemeanor that is subject to imprisonment, but which is not expressly subject to imprisonment in the “penitentiary” or otherwise expressly subject to the statute of limitations exception in § 5-106(b) of the Courts and Judicial Proceedings Article (“CJP”), such a violation is subject to the one-year statute of limitations in prosecuting the offense under CJP § 5-106(a).

Maryland law distinguishes between misdemeanor offenses and “penitentiary misdemeanor” offenses for the purpose of the application of a statute of limitations for commencing a prosecution. As the Maryland Supreme Court has explained, “[a]t common law, there is no general period of limitations applicable to criminal proceedings[,]” but “many criminal offenses are subject to specific limitations periods by statute.” *Masse v. State*, 320 Md. 605, 610-11 (1990). For example, “[i]n the absence of a specific statutory limitations period for a particular offense, the State may institute a prosecution for a felony at any time.” *Id.* (quoting *Greco v. State*, 307 Md. 470, 478 (1986)). As the Supreme Court also explained:

As to misdemeanors, the General Assembly over one hundred years ago mandated: “No prosecution ... shall be commenced for ... any misdemeanor except those punished by confinement in the penitentiary, unless within one year from the time of the offen[s]e committed.” Code (1860), Art. 57, § 10. At that time, and for many years thereafter, it was common for criminal statutes to designate not only

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the length of the incarceration for a criminal conviction but also the place where the defendant would serve the sentence. Trial judges would sentence convicted defendants to the particular institutions in accordance with the statutory authorization. Presumably, what the Legislature considered to be the most serious misdemeanors were made punishable by confinement in the state penitentiary. Sentences for misdemeanors apparently deemed less serious were by statute to be served in the county jails or state institutions such as the house of correction.

Id.

Existing CJP § 5-106 reflects this continuing exemption from a period of limitations for those misdemeanor offenses that expressly provide within their statutes for imprisonment in the “penitentiary”¹ or that the violation is subject to the statute of limitations exemption contained in CJP § 5-106(b).² As an exception to the requirement under CJP § 5-106(a) that “a prosecution for a misdemeanor shall be instituted within 1 year after the offense was committed[.]” § 5-106(b) provides, in pertinent part, that “if a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary or that a person is subject to this subsection[.]” the State “may institute a prosecution for the misdemeanor at any time[.]”

In the case of a violation of CR § 10-404(a) for willfully destroying, damaging, defacing, or removing an associated funerary object, including a gravestone or tomb, or other structure placed in a cemetery, the offense is a misdemeanor subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both. CR § 10-404(d). There is no reference within the statute for that offense to imprisonment in the “penitentiary” or that a violation of that offense is subject to CJP § 5-106(b).³ Therefore, under CJP § 5-106(a), the statute of limitations for commencing a prosecution for a violation of CR § 10-404(a) is one year following the commission of the offense.

¹ Although the actual locations to which an individual convicted of a “penitentiary” misdemeanor may be sentenced by the court appear to have largely lost their historical distinctions, inasmuch as an individual sentenced to imprisonment for more than 12 months would be within the custody of the Division of Correction (as opposed to a local correctional facility for a shorter sentence), regardless of the particular facility to which the individual is sentenced or assigned, the statutory distinction between misdemeanors and penitentiary misdemeanors remains for purposes of the application of the statute of limitations in the State for such offenses. See *discussion in State v. Stowe*, 376 Md. 436, 438-53 (2003).

² CJP § 5-106(c) through (ff) also contain a number of specific misdemeanor offenses that are subject to limitations periods other than one year, but a violation of CR § 10-404 is not among that list of offenses.

³ This is in contrast to CR § 10-402(a) and (h), which prohibits the removal or attempted removal of human remains from a burial site and is a misdemeanor that is expressly “subject to § 5-106(b) of the Courts Article,” and thus is exempt from the one-year statute of limitations under CR § 5-106(a).

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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,

A handwritten signature in black ink, appearing to read "Jeremy M. McCoy".

Jeremy M. McCoy
Assistant Attorney General