

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

Senate Bill 620 (Senators Stone and Hughes)
(Committee to Revise Article 27 – Crimes and Punishments)

Judicial Proceedings

Judiciary

Crimes - Accessory After the Fact - Benefit of Clergy

This bill codifies the common law felony of accessory after the fact. The bill provides that, unless another penalty is provided by law, the penalty for the offense is the lesser of imprisonment not exceeding five years or a penalty not exceeding the maximum penalty provided by law for committing the crime.

The bill also retains the existing statute abolishing benefit of clergy (Article 27, § 626), but alters it to eliminate references to sentences for felonies that previously were or were not subject to benefit of clergy.

Fiscal Summary

State Effect: Minimal. The bill's changes should not measurably affect overall State operations and finances for the Judiciary, the Office of the Public Defender, or the Division of Correction.

Local Effect: Minimal. The bill's changes should not measurably affect overall local operations and finances for the circuit courts, State's Attorneys' offices, or local correctional facilities.

Small Business Effect: None.

Analysis

Current Law: An accessory after the fact is a person who is aware of the commission of a felony and harbors and protects the felon or assists in the felon's avoidance of capture or punishment. According to Maryland case law, an accessory after the fact to murder is subject to a maximum punishment of five years imprisonment because the crime of being an accessory after the fact is a felony that was previously subject to the benefit of clergy.

Background: According to the notes contained in this bill, the only common law felony that is not either codified, have a statutory penalty, or been repealed is accessory after the fact. It is recognized, however, that there may be a common law felony that does not fall into one of the above categories. In that event, the common law felony would be treated in the same manner as a common law misdemeanor such as resisting arrest, i.e., the penalty would only be limited by the constitutional prohibition against cruel and unusual punishment.

Until 1809 the benefit of clergy was a common law defense to a crime based on the clergy's insistence that they were not subject to the secular courts for any crime. If the person asserting this defense was successful, the person was handed over to the ecclesiastical courts that handed down more lenient sentences than the secular courts.

Although the State criminal code abolished benefit of clergy in 1809, it limited punishment for crimes that were previously subject to benefit of clergy to five years imprisonment, and for those crimes that had not been subject to benefit of clergy to a maximum of 20 years imprisonment unless otherwise provided by the Annotated Code.

The Article 27 Committee was appointed in 1991 by the Speaker and the President and charged with making both substantive and stylistic changes to the State's criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victim's rights representative. In past sessions the committee has successfully sponsored legislation to revise the laws on accessory before the fact, arson, assault, burglary, destructive devices, disorderly conduct, escape, medicaid fraud, robbery, trespass, and victim's rights. The Criminal Law Code Revision Committee recommended that the Article 27 Committee study the issues of accessory after the fact and benefit of clergy, and this bill is the result of the committee's deliberations.

Additional Information

Prior Introductions: None.

Cross File: HB 610 (Delegates Getty and Doory) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services (Division of Correction), Office of the State's Attorneys' Coordinator, Department of Legislative Services

Fiscal Note History: First Reader – February 20, 2001
jm/jr

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