

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 230 (Senators Stone and Hughes)
(Committee to Revise Article 27 – Crimes and Punishments)
Judicial Proceedings

Criminal Law - Resisting Arrest - Penalty

This bill establishes a maximum penalty for the common law misdemeanor of resisting arrest. Specifically, the bill subjects violators to maximum penalties of a fine of \$5,000 and/or imprisonment for five years.

Fiscal Summary

State Effect: General fund revenues could increase minimally as a result of the bill's new statutory monetary penalty provision from cases heard in the District Court. General fund expenditures for correctional costs could also be minimally affected by the bill's new statutory imprisonment penalty, but only if incarceration sentencing patterns affecting State facilities change as a result of these provisions.

Local Effect: Revenues could increase minimally as a result of the bill's new statutory monetary penalty provision from cases heard in the circuit courts. Expenditures for correctional costs could also be minimally affected by the bill's new statutory maximum imprisonment penalty, but only if incarceration sentencing patterns affecting local detention facilities change as a result of these provisions.

Small Business Effect: None.

Analysis

Current Law: Resisting arrest is a common law offense involving a person's refusal to submit to a lawful arrest.

The elements of common law prohibitions in Maryland are derived from court decisions. A number of common law offenses currently have no statutory penalty. The only limitation on punishments for common law offenses without statutory penalties is, ordinarily, the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the U.S. Constitution and Articles 16 and 25 of the Declaration of Rights, Constitution of Maryland (as cited in *Simms v. State*, 288 Md. 712 (1980), and *State v. Huebner*, 305 Md. 601 (1986)).

Additional case law indicates that the courts may look to other statutory offenses charged along with the common law offense as guidance to a maximum sentence for a common law offense. In *Gerald v. State*, 299 Md. 138 (1984), the court placed a limit on the maximum penalty for common law assault based on related robbery charges that carried a statutory maximum penalty. The court stated that “the prosecution indicated its acquiescence to a possible maximum sentence” in the charging of the statutory offenses along with the common law offense.

Background: The Committee to Revise Article 27 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 victims’ rights representative. In past sessions the committee has successfully sponsored legislation to revise the laws on accessory before and after the fact, arson, assault, benefit of clergy, burglary, destructive devices, disorderly conduct, escape, leased or rented goods, Medicaid fraud, offensive contact, prostitution, robbery, sabotage, trespass, and victims’ rights.

The committee recommended a five-year maximum sentence for the common law crime of resisting arrest because in the opinion of the committee the assault requirement under the common law makes the crime a more serious crime than escape in the second degree, which carries a three-year maximum sentence. The penalty is also recommended as appropriate because the Commission on Criminal Sentencing Policy has classified resisting arrest as a Seriousness Category VI offense and several of the other offenses in this category carry maximum penalties of five years’ imprisonment.

Additional Information

Prior Introductions: In 2002, HB 667 and SB 760, which would have added and altered penalties for specified crimes and established penalties for specified common law crimes, received unfavorable reports from the House Judiciary Committee and Senate Judicial Proceedings Committee, respectively. The provisions of this bill were contained therein.

Cross File: HB 297 (Delegate Doory) – Judiciary.

Information Source(s): Department of Public Safety and Correctional Services,
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