

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE

House Bill 298 (Delegate Doory)  
(Committee to Revise Article 27 – Crimes and Punishments)

Judiciary

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Criminal Law - Misconduct in Office - Penalty

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This bill establishes a maximum penalty for the common law misdemeanor of misconduct in office. Specifically, the bill subjects a violator to maximum penalties of a fine of \$10,000 and/or imprisonment for ten years.

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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.

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Analysis

**Current Law:** Misconduct in office is a common law offense involving a public officer who, in the exercise of the duties of his or her office or while acting under color of that office: (1) commits an act which is wrongful in itself (malfeasance); (2) commits an

otherwise lawful act in a wrongful manner (misfeasance); or (3) fails to perform any act that is required by the duties of office (nonfeasance).

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 has recommended a ten-year maximum sentence for the common law crime of misconduct in office because the crime is similar in nature to the crimes of bribery of a public employee, which carries a maximum penalty of 12 years imprisonment, and false reports by election officials, which carries a maximum penalty of ten years imprisonment. Also, the sentence is recommended because the Commission on Criminal Sentencing Policy has classified misconduct in office as a Seriousness Category V offense and a number of similar offenses in this category carry maximum penalties of ten years imprisonment.

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### **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:** SB 228 (Senators Stone and Hughes) – Judicial Proceedings.

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

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