

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

House Bill 745

(Chairman, Judiciary Committee)

(By Request – Maryland Judicial Conference)

Judiciary

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**Criminal Law - Class A and Class B Misdemeanors**

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This bill establishes the categories of Class A and Class B misdemeanors.

The bill applies prospectively only and does not affect any case filed before the bill's October 1, 2004 effective date.

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**Fiscal Summary**

**State Effect:** The bill is not expected to have a significant impact on District Court workload.

**Local Effect:** Potential decrease in circuit court expenditures if the number of jury trials decreases substantially.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill applies to crimes classified as misdemeanors under State law or at common law.

The State's Attorney has discretion to charge a defendant alleged to have committed a misdemeanor that may be prosecuted in District Court with a Class A or a Class B misdemeanor. If the State charges the defendant with a Class B misdemeanor, it must

provide the defendant with written notice of its intent to file this charge at least five days prior to the defendant's first appearance before a District Court judge.

Maximum penalties for a Class B misdemeanor are 90 days imprisonment and/or a \$500 fine. A defendant charged with a crime for which the maximum term of imprisonment is 90 days or less cannot request a jury trial, as per current law.

A defendant who is not charged with a Class B misdemeanor is charged with a Class A misdemeanor. A defendant charged with a Class A misdemeanor, if convicted, is subject to the maximum penalty established for the crime under law or that is allowable at common law.

**Current Law:** The District Court has exclusive original jurisdiction in any criminal case in which a person at least 18 years old is charged with a common law or statutory misdemeanor. However, if the charge is one for which the defendant is entitled to and demands a jury trial, the case goes to circuit court. A defendant is entitled to demand a jury trial if the charge carries with it the possibility of incarceration for more than 90 days.

**Background:** The right to a trial by jury is guaranteed in Articles 5, 21, and 23 of the Maryland Declaration of Rights. Since jury trials are only available in circuit court, if a criminal case originates in the District Court, and the defendant is entitled to a jury trial, the defendant may file a "jury trial prayer," which transfers the case to circuit court.

Beginning in the 1970s, the numbers of jury trial prayers increased significantly, causing a workload problem in the circuit courts. The problem has persisted since that time to varying degrees. It is known that jury trials are often requested for reasons other than to actually obtain a jury trial, including delay, avoidance of a particular judge or prosecutor, and convenience of defense counsel. Because most of these cases are resolved at the circuit court level prior to the trial phase, only a small fraction of jury demands ultimately result in jury trials. Nevertheless, a large number of jury demands does burden the system.

Judicial committees were formed in the late 1970s and mid-1980s to study this issue and recommend solutions, spawning a number of corrective efforts. In 1981, the so-called "Gerstung Rule" was enacted, which eliminates a defendant's right to a jury trial at the initial trial level if the judge agrees not to impose a sentence of imprisonment of more than 90 days. The extent to which the Gerstung Rule prompted a decrease in the number of jury demands in the years after its implementation is unclear. In any event, the Court of Appeals held the rule to be unconstitutional as applied to the specific offenses charged

in three cases in the mid-1980s. See *Kawamura v. State*, 299 Md. 276 (1984); *Fisher v. State*, 305 Md. 357 (1986); and *State v. Huebner*, 305 Md. 601 (1986).

The codified Gerstung Rule was an attempt by the General Assembly to provide clear guidelines with respect to a defendant's right to a jury trial in the first instance (election of a jury trial in the circuit court in lieu of being tried without a jury in the District Court) versus obtaining a jury trial through a defendant's right to a *de novo* appeal to the circuit court following a conviction without a jury in the District Court. By establishing a 90-day penalty threshold, the General Assembly attempted to distinguish petty offenses that under common law historically did not trigger the right to be tried by a jury from other offenses to which the constitutional right applied. The General Assembly was trying to define the circumstances under which a defendant did not have a right to a jury trial in the first instance in order to reduce the number of jury trial prayers.

The *Kawamura*, *Fisher*, and *Huebner* holdings made clear that it is not merely the length of sentence that determines a petty offense or the right to deny a defendant the right to a jury trial at the initial trial level. In those cases, the Court of Appeals outlined the factors that must be considered in determining whether the State constitutional right attaches to an offense at the initial trial level. The court analysis involves whether the offense (1) had historically been considered a petty offense subject to the jurisdiction of justices of the peace or historically had been tried before juries; (2) is an infamous crime or is subject to infamous punishment; (3) is considered to be a "serious crime;" (4) has a significant maximum statutory penalty; and (5) is subject under statute to incarceration in the penitentiary. The relative lack of clarity in these cases as to which offenses are entitled to a jury trial in the first instance may be a contributing factor in the continued high numbers of jury trial prayers.

Jury demands have again increased significantly. Statewide, the number of jury trial prayers increased by over 24% between fiscal 1998 and 2002, and cases transferred to circuit court pursuant to jury trial prayers composed approximately 44% of the total number of criminal filings in circuit court in fiscal 2002. Consequently, at the request of the Conference of Circuit Judges, Chief Judge Bell of the Court of Appeals established an ad hoc committee, chaired by Judge William S. Horne, to study the issue and recommend possible solutions. Unlike the previous committees that studied this issue, which were composed almost exclusively of judges, this committee included representatives of all sectors of the criminal justice system. The committee convened on August 13, 2003, and held five meetings including an organizational meeting, two public hearings, and two work sessions.

The Horne Commission's recommendations to the Conference of Circuit Judges included creating subcategories of certain misdemeanors for which the maximum imprisonment

penalty would be limited to 90 days or less. This bill is another attempt to delineate those crimes for which the right to a jury trial does not attach at the initial trial level, and provides prosecutors with more charging discretion.

The Maryland Judicial Conference requested that this bill be introduced in the 2004 session.

**Local Expenditures:** While the bill is intended to limit the number of jury trials, it cannot be predicted with certainty how often prosecutors will choose to charge a defendant with a Class B rather than a Class A misdemeanor, thereby eliminating the defendant's right to request a jury trial.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 517 (Chairman, Judicial Proceedings Committee) (By Request – Maryland Judicial Conference) – Judicial Proceedings.

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

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