

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 651 (Senator Giannetti)
Judicial Proceedings

**Criminal Procedure - Jurisdiction for Electronic and Other Crimes - Territorial
Applicability**

This bill establishes a State policy with regard to jurisdiction over specified crimes and persons. The bill also establishes that persons committing crimes within or outside of the State are subject to prosecution under specified circumstances.

The bill applies prospectively to offenses committed after the bill's October 1, 2005 effective date.

Fiscal Summary

State Effect: Any increase in general fund expenditures due to more cases being prosecuted in the District Court depends on the number of cases that can be brought due to the increased jurisdiction.

Local Effect: Potential increase in expenditures due to more cases being prosecuted in the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: It is the policy of this State to exercise its jurisdiction over crimes and persons charged with committing crimes to the fullest extent allowable under the U.S. Constitution and the Maryland Constitution.

A person will be subject to prosecution in this State for an offense committed either within or outside of the State if:

- the offense is committed either wholly or partly within the State;
- the person's conduct committed wholly outside the State constitutes an attempt to commit an offense within this State or conspiracy to commit an offense within this State and an overt act in furtherance of the conspiracy was committed within the State;
- the person's conduct committed wholly or partly within this State constitutes an attempt, solicitation, or conspiracy to commit an offense in another jurisdiction that is also an offense under the laws of this State;
- the offense consists of an omission to perform outside this State a duty imposed by the law of this State with respect to domicile, residence, or a relationship to a person, thing, or transaction in this State;
- the offense is a violation of a law in this State that prohibits certain conduct outside the State; or
- jurisdiction is otherwise provided by law.

A person will be subject to prosecution for homicide in this State if any of the following occur in this State:

- the death of the victim;
- the bodily impact which causes the victim's death; or
- discovery of the body of the victim.

The State's jurisdictional territory includes the land and water within its boundaries and the air space above the land and water.

Current Law: Unless jurisdiction is specifically addressed by the Maryland Constitution or Code, jurisdiction is based on common law. Criminal courts generally have territorial jurisdiction to hear prosecutions only of crimes that occurred within the State.

In the District Court, a prosecution for a crime is brought in the district that includes the county where the crime was committed.

A prosecution may be brought in the county in which process for the arrest and prosecution of the defendant is first issued if: (i) the crime was committed at the boundary between counties; or (ii) the boundary is so uncertain or the site of the crime is so near to the boundary that it is doubtful in which county the crime was committed.

Background: The wave of electronic crimes being committed worldwide has created many procedural problems. In some instances, it is unclear exactly where the crime was committed, and therefore what criminal court would have jurisdiction. Many cases involving electronic crimes have been decided nationwide, resulting in differing jurisdictional rules.

One such case was decided by the Court of Appeals in 2000, *State v. Cain*, 360 Md. 205. In *Cain*, the defendant was charged with theft by deception following the sale of goods advertised via the Internet. The victim in Cumberland, after speaking with the defendant several times on the telephone and online, mailed a check to the defendant in Georgia. When the victim attempted to return the defective goods, the defendant stopped all contact. After the charges were dismissed by the District Court, the State appealed and the Court of Appeals reversed. The Court stated that in this case, the essential element of the crime, the mailing of the check, occurred in Maryland, thus giving Maryland jurisdiction. However, the opinion is unclear as to the outcome if there was no mailing, *i.e.*, the transaction was electronic.

This bill is based on the Model Penal Code (MPC). Several other states have enacted similar legislation, based on the MPC including: Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Maine, Montana, New Hampshire, New Jersey, Ohio, Pennsylvania, Texas, and Utah.

Other states have enacted legislation using language different from the MPC, often specifying where a crime is commenced and where a crime is consummated: Alabama, Alaska, Iowa, Minnesota, South Dakota, Tennessee, and Vermont.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mam/jr

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