

**Department of Legislative Services**  
Maryland General Assembly  
2005 Session

**FISCAL AND POLICY NOTE**

Senate Bill 389 (Senators Stone and Giannetti)  
(Committee to Revise Article 27 – Crimes and Punishments)

Judicial Proceedings

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**Criminal Law - Bad Checks - Notice of Reliance on Evidence of Dishonor of a Check**

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This bill requires the State's Attorney to provide written notice to a defendant or respondent when the State intends to introduce presumptive evidence in certain civil or criminal proceedings. It also allows the defendant or respondent to demand the presence of certain witnesses if the State intends to utilize certain presumptive evidence.

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**Fiscal Summary**

**State Effect:** None. The change is procedural in nature and would not directly affect judicial operations or expenditures.

**Local Effect:** None – see above.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** At least 10 days before a criminal or delinquency proceeding, the State must provide written notice to the defendant or respondent that the State intends to introduce and rely on presumptive evidence that:

- (1) a check was dishonored by the drawee and the drawer had no account or insufficient funds when the check was issued; or

- (2) a drawer or representative drawer had the intent when issuing a check to stop or countermand payment or otherwise cause the drawee to disregard, dishonor, or refuse to recognize the check.

On written demand from the defendant or respondent, filed at least five days before the proceeding, the State must require the presence of an authorized representative of the drawee as a witness.

**Current Law:** A notice of protest of a check or a certificate under oath of an authorized representative of the drawee declaring the dishonor of a check, the lack of an account, or that the drawer had insufficient funds is presumptive evidence that the:

- check was dishonored by the bank; and
- drawer had no account or insufficient funds.

The fact that a drawer stopper or countermanded payment of a check or otherwise caused the drawee to disregard, dishonor, or refuse to recognize the check without returning or tendering the return of the property obtained, is presumptive evidence that the drawer had the intent when issuing the check to stop or countermand payment or cause the drawee to refuse to recognize the check.

There is no requirement that the State provide notice of its intent to use the presumptive evidence.

**Background:** This past spring, the Supreme Court decided *Crawford v. Washington*, No. 02-9410 (2004), which held that, in most instances not involving certain hearsay exceptions, a testimonial statement by an unavailable witness is admissible in a criminal trial only if there is a prior opportunity to confront the witness through cross-examination.

In his opinion, Justice Scalia declined to outline a new balancing test to replace the one used in *Ohio v. Roberts*, 448 U.S. 56 (1980), stating, “By replacing categorical constitutional guarantees with open-ended balancing tests, we do violence to their design...Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation.”

Although Maryland’s law does not appear to be significantly affected by this decision, the Committee to Revise Article 27 recommended this modification in order to comply with the constitutional requirement outlined in *Crawford*.

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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 810 (Delegate Doory) (Committee to Revise Article 27 – Crimes and Punishments) – Judiciary.

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

**Fiscal Note History:** First Reader - February 15, 2005  
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Analysis by: Kineta A. Rotan

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510