

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 383 (Delegate Vallario)
(Committee to Revise Article 27 – Crimes and Punishments)

Judiciary

Criminal Law - Bribery of a Public Official - Immunity

This bill seeks to clarify the application of provisions prohibiting bribery of public employees. It clarifies (1) how testimony or the production of other information may be compelled; (2) provisions relating to witness immunity; and (3) the application of the privilege against self-incrimination.

The bill is contingent on the passage of SB 309/HB 380, which proposes a Constitutional Amendment to clarify provisions relating to witness immunity. Subject to this contingency, the bill is effective June 1, 2006.

Fiscal Summary

State Effect: The bill's requirements could be met with existing resources.

Local Effect: The bill's requirements could be met with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: A person who violates the prohibition against bribery of a public employee may be compelled to testify under the statutory provision governing compulsory testimony and the immunity that may be granted as a result of the testimony.

This bill incorporates provisions of current law that provide that if a witness claims a privilege against self-incrimination and refuses to testify or provide other information in a criminal proceeding or prosecution before a State grand jury, and the court orders the testimony or the production of other information, the witness may not refuse on the basis of the self-incrimination privilege. However, the testimony compelled or information produced under such a court order may not be used directly or indirectly against the witness in any criminal case, except in a prosecution for perjury, obstruction of justice, or for otherwise failing to comply with the court order.

If an individual has been or may be called to testify or provide other information in a criminal prosecution or proceeding before a State grand jury, on request by written motion of the prosecutor, the court must issue an order that requires the individual to give the testimony or provide the other information that has been refused by the individual due to the privilege against self-incrimination.

If a prosecutor seeks to compel an individual to testify or provide other information, the prosecutor must request, by written motion, that the court issue an order requiring the individual to give the testimony or provide the other information when the testimony or other information may be necessary to the public interest and the individual has refused or is likely to refuse due to the privilege against self-incrimination.

If a witness refuses, before a grand jury, to comply with a court order compelling testimony or other information, on written motion of the prosecutor and upon admission into evidence of a transcript of the refusal, the court must treat the refusal as direct contempt and proceed accordingly.

Current Law: A public employee means an officer or employee of the State or a county, municipal corporation, bicounty or multicounty agency, or other political subdivision of the State. Public employee includes an executive officer, judge, or judicial officer of the State, a member or officer of the General Assembly, a member of the police force of Baltimore City or the Department of State Police, and a member, officer, or executive officer of a municipal corporation.

A person may not bribe or attempt to bribe a public employee to influence the public employee in the performance of an official duty. A public employee may not demand or receive a bribe, fee, reward, or testimonial to influence the performance of official duties or to neglect or fail to perform official duties. A person who violates this provision is guilty of the misdemeanor of bribery and is subject to imprisonment for at least 2 years, but not more than 12 years and/or a fine of least \$100, but not more than \$5,000. A person convicted of this crime may not vote or hold an office of trust or profit in the State. Notwithstanding any other provision of law, the State may institute a prosecution

for this misdemeanor at any time. For purposes of the Maryland Constitution, a person convicted of this offense is deemed to have committed a misdemeanor whose punishment is confinement in the penitentiary and may reserve a point or question for *in banc* review as provided under the Maryland Constitution.

A person who commits this offense is a competent witness and may be compelled to testify against any person who may have committed this offense. A person who is compelled to testify under these circumstances is immune from prosecution for a crime about which the person was compelled to testify.

Background: This bill incorporates recommendations from the Committee to Revise Article 27 of the Annotated Code of Maryland – Crimes and Punishments and includes recommendations from the former Criminal Law Article Review Committee.

The Committee to Revise Article 27 recommended this bill because of a concern that the current statutory provisions compelling testimony and providing immunity under bribery offenses are not consistent with the right against self-incrimination provided in the U.S. Constitution:

The Criminal Law Article Review notes, for the consideration of the General Assembly, that... [§9-201(f) of the Criminal Law Article] which allows a witness to be compelled to testify and provides transactional immunity for that testimony raises significant constitutional concerns under the 5th and 14th Amendments to the U.S. Constitution, and their State counterpart, Art. 22 of the Maryland Declaration of Rights...The relevant constitutional provisions generally prohibit self-incrimination. The granting of some form of immunity against prosecution does not, of itself, cure the constitutional defect... The General Assembly may wish to explore the scope of immunity that may be required to allow compelled testimony in harmony with federal and State constitutional precedent...(Revisor's Note to § 9-201 of the Criminal Law Article)

SB 309/HB 380 of 2006 would amend the Maryland Constitution to clarify the circumstances under which witnesses involved in bribery may be compelled to testify and receive immunity. If either of the bills passes the General Assembly, the constitutional amendment will be submitted to voters at the 2006 general election for adoption or rejection.

The former Criminal Law Article Review Committee, which was charged with the nonsubstantive revision of the State's criminal law, identified various provisions that appeared to require substantive changes to the existing law. Based on these provisions of

the article review committee identified by “flags” or questions to the General Assembly, the Article 27 committee recommends a series of substantive, yet largely clarifying changes to definitions in provisions dealing with bribery of public officials, as well as identity fraud, and extortion by government officers and employees.

Additional Information

Prior Introductions: Similar bills, SB 385/HB 820 of 2005, received unfavorable reports from the Judicial Proceedings and Judiciary committees, respectively.

Cross File: SB 307 (Senators Stone and Giannetti) (Committee to Revise Article 27 – Crimes and Punishments) – Judicial Proceedings.

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

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ncs/jr

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