

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 137

(Senator Glassman)

Judicial Proceedings

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Crimes - Intentional Destruction of Will

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This bill prohibits a person from intentionally destroying the will of another person without authorization in writing from the maker of the will. A violator is guilty of a misdemeanor and is subject to imprisonment for up to one year and/or a fine of up to \$1,000. A belief that the destroyed will was invalid is not a defense to a charge of a violation.

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Fiscal Summary

**State Effect:** Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provision.

**Local Effect:** Potential minimal increase in revenues and expenditures due to the bill's penalty provision.

**Small Business Effect:** None.

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Analysis

**Current Law:** Any person may make a will if the person is age 18 or older and legally competent to make a will. Generally, a will has to be in writing; signed by the testator (person making the will), or by some other person for the testator. If the will is signed by another person, the signing must be in the testator's presence and by his or her express direction. A will must also be attested to and signed by two or more credible witnesses in the presence of the testator. Among other ways, a will may be revoked by destruction of the will by the testator, or by some other person in the testator's presence and by the

testator's express direction and consent. (*See* Estates and Trusts Article, §§ 4-101, 4-102, and 4-105.)

Under the Criminal Law Article of the Annotated Code, a person may not willfully or corruptly destroy a will, or any part of a will, if as a result of the destruction the estate or right of any person may be defeated, injured, or altered. A person who does so is guilty of a misdemeanor and is subject to imprisonment for at least three years and up to seven years. Also, unless the testator gives instruction to the person keeping the will for safe custody, a person who receives a will for safe custody may not destroy the will. A person who does so is guilty of a misdemeanor and is subject to imprisonment for at least 18 months and up to 15 years. A person committing these offenses is subject to arrest and prosecution at any time. (*See* Criminal Law Article §§ 8-701 and 8-702.)

**State Revenues:** General fund revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

**State Expenditures:** General fund expenditures may increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2010 are estimated to range from \$23 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

**Local Revenues:** Revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

**Local Expenditures:** Expenditures may increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 48 (Delegate Norman) - Judiciary.

**Information Source(s):** Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Register of Wills, Department of Legislative Services

**Fiscal Note History:** First Reader - January 20, 2009  
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Analysis by: Scott D. Kennedy

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