

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 558

(Senator Forehand)

Judicial Proceedings

Judiciary

Crimes - Solicitation - Statute of Limitations

This bill establishes that the statute of limitations for the prosecution of the crime of solicitation is the statute of limitations for the prosecution of the substantive crime that is the subject of the solicitation.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures if the bill's increase in the statute of limitations for solicitation results in an increase in the number of fines imposed in District Court cases and an increase in incarcerations.

Local Effect: Minimal increase in local revenues from fines imposed in circuit court cases. Minimal increase in local expenditures if the bill results in an increase in the number of defendants being incarcerated in local correctional facilities.

Small Business Effect: None.

Analysis

Current Law: Under the common law, solicitation involved urging, advising, or otherwise inciting another person to commit a crime. Solicitation, like an attempt to commit a crime or a conspiracy to commit a crime, is referred to as an "inchoate" crime. Inchoate crimes reflect steps taken toward the commission of another crime (the substantive crime), that are serious enough that they are considered criminal behavior worthy of punishment.

In general, prosecution for a misdemeanor must be instituted within one year after the offense was committed. However, if a statute establishes that a misdemeanor is punishable by confinement in the penitentiary, the State may institute a prosecution for the misdemeanor at any time. Under the common law, solicitation is a misdemeanor regardless of whether the substantive crime that is the basis of the solicitation is a misdemeanor or felony. There is no statute of limitations for a felony.

Current law specifies that the statute of limitations for the prosecution of the crime of conspiracy is the statute of limitations for the prosecution of the substantive crime that is the subject of the conspiracy.

State Fiscal Effect: Inchoate crimes are generally common law crimes. However, some inchoate crimes (*e.g.*, attempted murder, rape, sexual offense, and robbery) have been made statutory felonies. The maximum penalty for an attempt or conspiracy to commit a crime is the maximum penalty for the crime that is the subject of the attempt or conspiracy. Assuming that the same maximum penalty applies to solicitation, which is the remaining inchoate crime, to the extent that the bill's increase in the statute of limitations increases the number of convictions for solicitation, the bill will result in increased general fund revenues from fines imposed in District Court cases and increased general fund expenditures for incarcerations in State facilities.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 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 about \$385 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally if more people are committed to local detention facilities as a result of the bill. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: HB 921 (Delegate Waldstreicher) - Judiciary.

Information Source(s): Kent, Montgomery, and Worcester counties; Baltimore City; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of State Police; Black's Law Dictionary; Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2012
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