

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 216

(Senator Lee, *et al.*)

Judicial Proceedings

Crimes - Solicitation to Commit Murder or Arson - Statute of Limitations

This bill establishes that the statute of limitations for the prosecution of the crime of solicitation to commit murder in the first or second degree or arson in the first or second degree is the statute of limitations for the prosecution of the substantive crime that is the subject of the solicitation. Since there is no statute of limitations for murder or arson, these solicitation offenses may be prosecuted at any time.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures beginning in FY 2018 if the bill's elimination of the statute of limitations for solicitation increases the number of fines imposed in District Court cases and incarcerations in State facilities.

Local Effect: Minimal increase in local revenues from fines imposed in circuit court cases. Expenditures are not affected.

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.

Background: According to the Maryland Sentencing Guidelines Database, two people were sentenced for solicitation to commit murder in the first degree in the State's circuit courts during fiscal 2014. The Maryland State Commission on Criminal Sentencing Policy did not receive sentencing information for anyone sentenced in the State's circuit courts during fiscal 2014 for solicitation to commit second-degree murder or arson in the first or second degree.

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, if the bill's increase in the statute of limitations increases the number of convictions for solicitation, the bill results in increased general fund revenues from fines imposed in District Court cases and increased general fund expenditures for incarcerations in State facilities. Given the potential penalties and the seriousness of the solicitation offenses affected by the bill, it is likely that these cases are tried in the circuit courts. However, solicitation is a misdemeanor eligible for prosecution in the District Court.

First-degree murder is a felony punishable by imprisonment for life (with or without the possibility of parole). Second-degree murder is a felony punishable by imprisonment for up to 30 years. Arson in the first degree is a felony punishable by imprisonment for up to 30 years and/or a maximum fine of \$50,000. Arson in the second degree is a felony punishable by imprisonment for up to 20 years and/or a maximum fine of \$30,000.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,300 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 State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

Local Revenues: Local revenues increase minimally from fines imposed in circuit court cases.

Additional Information

Prior Introductions: HB 1046 of 2015 and HB 646 of 2014 both received unfavorable reports from the House Judiciary Committee. HB 699 of 2013 also received an unfavorable report from the House Judiciary Committee. Its cross file, SB 416, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None designated. However, HB 97 (Delegate B. Wilson - Judiciary) is identical.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Office of the Public Defender, State's Attorneys' Association, Department of State Police, Department of Legislative Services

Fiscal Note History: First Reader - February 1, 2016
md/kdm

Analysis by: Amy A. Devadas

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