

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 276 (Delegate Rosenberg, *et al.*)
Judiciary and Environment and
Transportation

Criminal Law - Misconduct in Office - Public Official

This bill expands how a “public official” is defined, for the purpose of the common law crime of misconduct in office, to include a person employed in the executive or management service of the Executive Branch of State government.

Fiscal Summary

State Effect: None. The bill is not anticipated to affect State operations or finances.

Local Effect: None. The bill is not anticipated to affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law: Various provisions of State law authorize the removal of specified officials upon a finding of misconduct in office, but there is no specific, broadly applicable, offense prescribed in statute for official misconduct. For example, specified employees or officials of the Patuxent Institution are guilty of misconduct in office if there is a violation of the institute’s conflict of interest rules. A violation results in removal from office or employment. In addition, the Governor may remove specified officials serving on State boards or commissions who have been found guilty of misconduct in office. However, there is no additional statutory penalty for misconduct in office for these positions outside of the individual’s removal from office or employment.

The crime of “misconduct in office” is a common law misdemeanor. In the case *Leopold v. State*, 216 Md. App. 586 (2014), the Maryland Court of Special Appeals defined the offense as “corrupt behavior by a public officer in the exercise of the duties of his office or while acting under color of his office.”

Background: According to the Maryland State Prosecutor, for the purpose of the common law misconduct in office offense, the Maryland Court of Appeals has enumerated guidelines to be used in determining whether an individual is a public official, including whether

- the position was created by law and involves continuing and not occasional duties;
- the holder performs an important public duty;
- the position calls for the exercise of some portion of the sovereign power of the State; and
- the position has a definite term for which a commission is issued, and a bond and an oath are required.

These factors are not conclusive, and an individual may nonetheless be considered a public official if he/she exercises a large portion of the sovereign power of government or can be called on to exercise police powers.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Budget and Management; State Ethics Commission; State Prosecutor; Department of Legislative Services

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