

SENATE BILL 200

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CF 0lr2084

By: **The President (By Request – Office of the State Prosecutor)**

Introduced and read first time: January 16, 2020

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Misconduct in Office**

3 FOR the purpose of prohibiting a person from committing two or more acts constituting
4 misconduct in office under one scheme or continuing course of conduct; providing a
5 penalty for a violation of this Act; establishing a statute of limitations for a
6 prosecution commenced under this Act; providing that a person who violates this Act
7 may reserve a point or question for in banc review; defining a certain term; and
8 generally relating to misconduct in office.

9 BY repealing and reenacting, without amendments,
10 Article – Courts and Judicial Proceedings
11 Section 5–106(b)
12 Annotated Code of Maryland
13 (2013 Replacement Volume and 2019 Supplement)

14 BY adding to
15 Article – Criminal Law
16 Section 9–901 and 9–902 to be under the new subtitle “Subtitle 9. Misconduct in
17 Office”
18 Annotated Code of Maryland
19 (2012 Replacement Volume and 2019 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – General Provisions
22 Section 5–101(a) and (y) and 5–103
23 Annotated Code of Maryland
24 (2019 Replacement Volume)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
26 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Courts and Judicial Proceedings

5–106.

(b) Notwithstanding § 9–103(a)(3) of the Correctional Services Article or any other provision of the Code, if a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary or that a person is subject to this subsection:

(1) The State may institute a prosecution for the misdemeanor at any time; and

(2) For purposes of the Maryland Constitution, the person:

(i) Shall be deemed to have committed a misdemeanor whose punishment is confinement in the penitentiary; and

(ii) May reserve a point or question for in banc review as provided under Article IV, § 22 of the Maryland Constitution.

Article – Criminal Law**SUBTITLE 9. MISCONDUCT IN OFFICE.****9–901.**

FOR THE COMMON LAW CRIME OF MISCONDUCT IN OFFICE, IN ADDITION TO ITS JUDICIALLY DETERMINED MEANING, A “PUBLIC OFFICIAL” INCLUDES:

(1) AN INDIVIDUAL WHO IS A LOCAL OFFICIAL AS SET FORTH IN § 5–101 OF THE GENERAL PROVISIONS ARTICLE; AND

(2) AN INDIVIDUAL WHO IS A PUBLIC OFFICIAL AS SET FORTH IN § 5–103 OF THE GENERAL PROVISIONS ARTICLE.

9–902.

(A) A PERSON MAY NOT COMMIT TWO OR MORE ACTS CONSTITUTING MISCONDUCT IN OFFICE UNDER ONE SCHEME OR CONTINUING COURSE OF CONDUCT.

(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE MISDEMEANOR OF SCHEME OF MISCONDUCT IN OFFICE AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS.

(C) A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO § 5–106(B) OF

1 **THE COURTS ARTICLE.**

2 **Article – General Provisions**

3 5–101.

4 (a) In this title the following words have the meanings indicated unless:

5 (1) the context clearly requires a different meaning; or

6 (2) a different definition is adopted for a particular provision.

7 (y) “Local official”, subject to § 5–801 of this title, means an official, officer, or
8 employee of a county or municipal corporation that the governing body of the county or
9 municipal corporation determines is subject to Subtitle 8, Part II of this title.

10 5–103.

11 (a) The determination of whether an individual is a public official for the purposes
12 of this title shall be made in accordance with this section.

13 (b) Except as provided in subsection (f) of this section, the following individuals
14 in executive units are public officials:

15 (1) an individual who receives compensation at a rate equivalent to at least
16 State grade level 16, or who is appointed to a board, if the Ethics Commission determines
17 under § 5–208 of this title that:

18 (i) the individual, acting alone or as a member of an executive unit,
19 has decision–making authority or acts as a principal advisor to an individual with
20 decision–making authority:

21 1. in making State policy in an executive unit; or

22 2. in exercising quasi–judicial, regulatory, licensing,
23 inspecting, or auditing functions; and

24 (ii) the individual’s duties are not essentially administrative and
25 ministerial;

26 (2) any other individual in an executive unit if the Ethics Commission
27 determines that the individual, acting alone or as a member of the executive unit, has
28 decision–making authority or acts as a principal advisor to an individual with
29 decision–making authority in drafting specifications for, negotiating, or executing contracts
30 that commit the State or an executive unit to spend more than \$10,000 in a year;

31 (3) a member, appointee, or employee of the Maryland Stadium Authority;

1 (4) a member, appointee, or employee of the Canal Place Preservation and
2 Development Authority;

3 (5) a member of the Emergency Medical Services Board; and

4 (6) except in counties in which a county council or board of county
5 commissioners sits as a board of license commissioners or a liquor control board, a member
6 or employee of a board of license commissioners or a liquor control board.

7 (c) Except as provided in subsection (f) of this section, an individual in the
8 Legislative Branch is a public official if the individual:

9 (1) receives compensation at a rate equivalent to at least State grade level
10 16; and

11 (2) is designated a public official by order of the presiding officers of the
12 General Assembly.

13 (d) (1) (i) In this paragraph, “individual in the Judicial Branch” includes
14 an individual who is:

15 1. employed in the office of a clerk of court;

16 2. paid by a county to perform services in an orphans’ court
17 or circuit court;

18 3. employed by the Attorney Grievance Commission;

19 4. employed by the State Board of Law Examiners; or

20 5. employed by the Court of Appeals Standing Committee on
21 Rules of Practice and Procedure.

22 (ii) Except as provided in paragraph (2) of this subsection or
23 subsection (f) of this section, an individual in the Judicial Branch is a public official if the
24 individual receives compensation at a rate equivalent to at least State grade level 16.

25 (2) The Ethics Commission may exclude the individuals in a position in the
26 Judicial Branch from inclusion as public officials under paragraph (1)(ii) of this subsection:

27 (i) on the recommendation of the State Court Administrator; and

28 (ii) if the Ethics Commission determines that the position does not
29 have policy, policy advice, quasi-judicial, or procurement functions.

30 (e) A member of a bicounty commission is a public official.

- 1 (f) The following are not public officials:
- 2 (1) a State official;
- 3 (2) an individual employed on a contractual basis unless the individual is:
- 4 (i) employed on a full-time basis for more than 6 months; and
- 5 (ii) designated as a public official under subsection (b)(1) or (c) of this
- 6 section; and
- 7 (3) a part-time or full-time faculty member at a State institution of higher
- 8 education:
- 9 (i) as to subsection (b)(2) of this section, only when the individual is
- 10 acting in the capacity of a faculty member; and
- 11 (ii) as to any other provision of this section, unless the individual
- 12 also:
- 13 1. is employed in another position that causes the individual
- 14 to be designated as a public official; or
- 15 2. directly procures, directly influences, or otherwise directly
- 16 affects the formation or execution of any State contract, purchase, or sale, as established
- 17 by regulations adopted by the Ethics Commission and approved by the Joint Committee on
- 18 Administrative, Executive, and Legislative Review.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

20 October 1, 2020.