

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 671
Judiciary

(Delegate Shank)

Criminal Law - Possessing Stolen Property

This bill provides that, in a prosecution for theft by possessing stolen property, it is not a defense that the property was obtained by means other than the commission of theft, if the property was explicitly described to the defendant as being obtained through the commission of theft.

Fiscal Summary

State Effect: None. This bill is not expected to have a measurable effect on prosecutions, plea negotiations, or convictions for theft by possessing stolen property.

Local Effect: None – see above.

Small Business Effect: None.

Analysis

Current Law: Under the general theft provisions, a person convicted of theft of property with a value of \$500 or more is guilty of a felony and subject to maximum penalties of imprisonment for 15 years and/or a fine of \$25,000. A person convicted of theft of property with a value of less than \$500 is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500. Regardless of value, the convicted person must restore the owner's property or pay the owner for the value of the property.

Under the prohibition against the unauthorized removal of property without the permission of the owner, a person may not enter the premises of another, and take away from the premises or out of the custody or use of the other, any property, including a motor vehicle. A violator is guilty of a misdemeanor and subject to penalties of imprisonment for at least six months and not more than four years and/or a fine of at least \$50 and not more than \$100. The convicted person must restore the property taken away or, if unable to, must pay the owner its full value. It is not a defense that the person intends to hold or keep the property for the person's present use and not with the intent of appropriating or converting the property.

Chapter 130 of 2004 created a new petty theft sentencing category for existing theft, bad checks, and credit card offenses where the value of the goods, services, and other property involved in the offense is less than \$100. A violator is guilty of a misdemeanor and subject to maximum penalties of 90 days' imprisonment and/or a \$500 fine.

A person may not possess stolen personal property knowing that it has been stolen, or believing that it probably has been stolen, if the person: (1) intends to deprive the owner of the property; (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or (3) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

In a prosecution for theft by possession of stolen property under this subsection, it is not a defense that: (1) the person who stole the property has not been convicted, apprehended, or identified; (2) the defendant stole or participated in the stealing of the property; or (3) the stealing of the property did not occur in Maryland.

Unless the person who criminally possesses stolen property participated in the stealing, the person who criminally possesses stolen property and a person who has stolen the property are not accomplices in theft for the purpose of any rule of evidence requiring corroboration of the testimony of an accomplice.

A person may not obtain control over property knowing that the property was lost, mislaid, or was delivered under a mistake as to the identity of the recipient or nature or amount of the property, if the person: (1) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner; (2) fails to take reasonable measures to restore the property to the owner; and (3) intends to deprive the owner permanently of the use or benefit of the property when the person obtains the property or at a later time.

Under these provisions, an offender's intention or knowledge that a promise would not be performed may not be established by or inferred solely from the fact that the promise was not performed.

The following defenses to the crime of theft are not allowed:

- that the defendant has an interest in the property that was the subject of the theft if another also has an interest in or right to possess the property that the defendant is not entitled to infringe;
- that the property was taken, obtained, or withheld from a person who had obtained the property by illegal means; or
- that the value of the services or property was actually more than \$100 when petty theft has been charged.

It is a defense to the crime of theft that:

- the defendant acted under a good faith claim of right to the property involved;
- the defendant acted in the honest belief that the defendant had the right to obtain or exert control over the property as the defendant did;
- the property involved was that of the defendant's spouse, unless the defendant and the defendant's spouse were not living together as husband and wife and were living in separate residences at the time of the alleged theft; or
- in a case of theft of a trade secret, the defendant rightfully knew the trade secret, or the trade secret was available to the defendant from a source other than the owner.

Background: The Maryland Court of Appeals has held that exclusive possession of recently stolen goods, without a satisfactory explanation, permits an inference of fact (strong enough to sustain a conviction) that the possessor was the thief or the receiver of stolen goods and, thereby, in violation of Maryland's prohibition against theft [*Burns v. State*, 149 Md App. 526, 817 A.2d 885 (2003)].

According to the most recent *Uniform Crime Report* (2003), there were 24,905 arrests statewide for "larceny-theft." Of that total, 3,935 such arrests were made in Baltimore City, 3,455 in Anne Arundel County, 1,710 in Prince George's County, and 1,953 in Montgomery County. The number or percentage of these arrests that qualified for a misdemeanor or felony charge is not known. It is also not known how many of the arrests resulted in successful prosecutions leading to imprisonment terms and/or fines.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services,
Department of State Police, Department of Legislative Services

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