

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1362
Judiciary

(Delegate Anderson, *et al.*)

**Crimes - Robbery, Burglary, or Theft of Property - Controlled Dangerous
Substances**

This bill clarifies that (1) the crime of robbery includes robbing or attempting to rob another of a drug, a substance, or an immediate precursor listed as a controlled dangerous substance (CDS) in Schedules II through V and (2) the crime of theft includes theft of a drug, a substance, or an immediate precursor listed as a CDS in Schedules II through V. The bill also establishes the offense of breaking and entering the storehouse of another with the intent to steal, take, or carry away a drug, a substance, or an immediate precursor listed as a CDS in Schedules II through V. A violator is guilty of felony second-degree burglary and is subject to up to 20 years imprisonment and/or a fine of up to \$10,000. However, the bill requires a violator to undergo a mandatory drug assessment. If the drug assessment determines that the violator has a CDS addiction, then criminal penalties do not apply and the person must be entered into a drug addiction treatment program by the Department of Health and Mental Hygiene (DHMH).

Fiscal Summary

State Effect: General fund expenditures for DHMH increase, potentially significantly, due to the bill's drug assessment and treatment provisions. Federal fund expenditures also increase, to the extent individuals qualify for services under Medicaid. Federal fund revenues increase correspondingly. Minimal increase in general fund expenditures due to the bill's penalty provision for the proposed expansion of the burglary offense. Enforcement can be handled with existing resources. General fund revenues are not materially affected.

Local Effect: Minimal increase in local revenues due to the bill's penalty provision for the proposed expansion of the burglary offense. Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: Under the Health-General Article, before or during a criminal trial or a term of probation, or before or after sentencing, a court may order DHMH to evaluate a defendant to determine whether, by reason of drug or alcohol abuse, the defendant is in need of treatment if (1) it appears to the court that the defendant has an alcohol or drug abuse problem or (2) the defendant alleges an alcohol or drug dependency. The court may set and change the conditions under which an examination is conducted. The court may decide whether to allow the examination on an outpatient basis or to hold the defendant in custody for the examination. Within seven days of conducting the evaluation, the evaluator must submit a complete report to the court, DHMH, and the defendant or the defendant's attorney.

CDS are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. The definition of property as it pertains to robbery, burglary, and theft does not include CDS listed on any of the five schedules.

Robbery – A person may not commit or attempt to commit a robbery. A violator is guilty of a felony punishable by up to 15 years imprisonment.

A person may not commit or attempt to commit a robbery with a dangerous weapon or by displaying a written instrument claiming that the person has possession of a dangerous weapon. A violator is guilty of a felony punishable by up to 20 years imprisonment.

Second-degree Burglary – A person may not break and enter a storehouse of another with the intent to commit theft, a crime of violence, or second-degree arson. A violator is guilty of a felony punishable by up to 15 years imprisonment.

A person may not break and enter the storehouse of another with the intent to steal, take, or carry away a firearm. A violator is guilty of a felony punishable by up to 20 years imprisonment and/or a fine of up to \$10,000.

Theft – A person may not, under specified circumstances (1) willfully or knowingly obtain or exert control over property; (2) obtain control over property by willfully or knowingly using deception; (3) possess stolen property knowing that it has been stolen or believing that it probably has been stolen; (4) 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; or (5) obtain another's services that are available only for compensation by deception or with knowledge that the services are provided without the consent of the person providing them. A violator is required to restore the owner's property or pay the owner the value of the property or services.

Exhibit 1 shows the various criminal penalties for theft, depending on the value of the property or services involved.

Exhibit 1
Theft – Criminal Penalties

<u>Value of Property and/or Services</u>	<u>Maximum Penalty</u>
Less than \$100	Misdemeanor – 90 days imprisonment and/or a \$500 fine
Less than \$1,000	Misdemeanor – 18 months imprisonment and/or a \$500 fine
Less than \$1,000 (two or more prior convictions)	Misdemeanor – 5 years imprisonment and/or a \$5,000 fine
Between \$1,000 and \$10,000	Felony – 10 years imprisonment and/or \$10,000 fine
Between \$10,000 and \$100,000	Felony – 15 years imprisonment and/or \$15,000 fine
\$100,000 or more	Felony – 25 years imprisonment and/or \$25,000 fine

Source: Code of Maryland

State Expenditures: General fund expenditures for DHMH increase, potentially significantly, due to the bill's requirement that a person who violates the bill's second-degree burglary offense must undergo a drug assessment and, if applicable, must be admitted for treatment by DHMH. DHMH advises that court-ordered drug assessments cost \$200 per assessment and that residential treatment costs \$17,000 per placement. Some individuals may be eligible to receive services through Medicaid; Medicaid-eligible services are subject to a federal match rate (which varies depending on the coverage group of the individual). Therefore, federal fund expenditures also increase; federal fund

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revenues increase correspondingly. DHMH notes that it is unclear whether DHMH is required to pay for assessments and treatment for individuals who have private insurance or who do not otherwise qualify for reimbursable services. DHMH was unable to estimate the number of people who may be referred to services under the bill.

General fund expenditures also increase minimally as a result of the bill's incarceration penalty, to the extent people convicted of the bill's expanded second-degree burglary offense are not ordered to undergo treatment for a CDS addiction and are instead subject to criminal penalties, due to more people being committed to State correctional facilities for longer periods of time. The number of people convicted of the burglary offense as altered by the bill is expected to be minimal. This estimate assumes that the activities affected by the bill are not being prosecuted as second-degree burglaries under existing statute.

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.

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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had 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 the State 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 State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts, to the extent individuals convicted of the bill's expanded second-degree burglary offense are not ordered to undergo treatment for a CDS addiction and are instead subject to criminal penalties.

Additional Information

Prior Introductions: HB 1137 of 2014, a similar bill as introduced, passed the House as amended and passed on second reading in the Senate as amended, but no further action was taken.

Cross File: Although designated as a cross file, SB 949 (Senator Ramirez, *et al.* - Judicial Proceedings) is not identical.

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

Fiscal Note History: First Reader - February 24, 2016
min/kdm

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