

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 90  
Judiciary

(Delegate Moon, *et al.*)

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Public Safety - Smoke Detection System Violation - Civil Offense

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This bill decriminalizes misdemeanor violations of the smoke detection systems requirements under Public Safety Article, Title 9, Subtitle 1. Under the bill, a violation of this subtitle is a civil offense, subject to a fine of up to \$1,000. Adjudication of a violation of the subtitle is not a criminal conviction for any purpose and does not impose any of the civil disabilities that may result from a criminal conviction.

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Fiscal Summary

**State Effect:** The bill's changes can be handled with existing budgeted resources, as discussed below.

**Local Effect:** The bill is not expected to materially affect local finances.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill authorizes a police officer to issue a citation to a person who the officer has probable cause to believe has committed a violation of the subtitle. The citation must contain specified information, including the fine that may be imposed, a notice that prepayment of the fine is allowed, and a notice that the District Court must promptly send the person a summons to appear for trial. At trial, the State has the burden to prove the defendant's guilt to the same extent as is required in a criminal case, and the District Court must apply the same evidentiary standards prescribed by law for a criminal case.

The defendant is entitled to (1) cross-examine each witness who appears against the defendant; (2) produce evidence and witnesses on the defendant's own behalf; (3) testify on the defendant's own behalf; and (4) be represented by counsel of the defendant's own choosing and at the defendant's own expense. The defendant may enter a plea of guilty or not guilty, and the verdict must be guilty of a civil violation or not guilty of a civil violation.

If the defendant is found guilty, the District Court may suspend or defer payment of the fine under court determined conditions. A defendant's willful failure to pay a fine may be treated as criminal contempt, punishable as provided by law. A defendant found guilty of a violation may file an appeal, a motion for a new trial, or a motion for a revision of a judgment.

The State's Attorney for each county may (1) prosecute a violation in the same manner as a prosecution of a criminal case, including entering a *nolle prosequi*, or placing the case on a stet docket, and (2) exercise authority in the same manner prescribed by law for a violation of the criminal laws of the State.

**Current Law:** Title 9, Subtitle 1 of the Public Safety Article establishes specified requirements for smoke detection systems and smoke alarms. Smoke alarm requirements must be enforced by the State Fire Marshal, a county or municipal fire marshal, a fire chief, the Baltimore City Fire Department, or any other designated authority having jurisdiction.

Depending on the date of construction, there are various requirements for the types and placement of smoke alarms in each sleeping area within each residential occupancy, including one- and two-family dwellings, lodging or rooming houses, hotels, dormitories, and apartment buildings. Landlords and property owners are generally responsible for the proper installation, repair, maintenance, and replacement of required smoke alarms. Local jurisdictions may adopt smoke alarm regulations that are more stringent than State law.

For all new residential units constructed after July 1, 2013, at least one smoke alarm must be installed in each sleeping room, in the hallway or common area outside of sleeping rooms, and in the hallway or common area on each level within a residential dwelling unit, including basements and excluding specified unoccupied spaces such as attics.

By January 1, 2018, smoke alarm placement in existing residential occupancies must be upgraded to comply with minimum specified standards, including the number and placement of alarms and alarm requirements. Smoke alarm placement in a one- or two-family dwelling must be upgraded to comply with these standards if the existing alarms are more than 10 years old, fail to operate or malfunction, if there is a change in tenancy and the residence has not been previously equipped with sealed, long-life battery smoke alarms, or if a building permit is issued for an addition to a residential unit or alteration to a residential unit.

Pursuant to § 9-109 of the Public Safety Article, a person who knowingly violates these requirements is guilty of a misdemeanor and on conviction is subject to imprisonment of up to 10 days or a fine of up to \$1,000, or both.

Under § 9-106.1 of the Public Safety Article, a person is prohibited from selling a battery operated smoke alarm in the State for use in sleeping areas of residential occupancies unless the smoke alarm contains specified features and uses one or more “long-life batteries.” This requirement does not apply to a fire alarm, smoke detector, smoke alarm, or ancillary component that is electronically connected and meets other specified requirements or any other device that the State Fire Marshal exempts through regulation. Violators are guilty of a misdemeanor and subject to a fine of up to \$1,000.

**Background:** According to the Judiciary, there was one violation of § 9-109(a) of the Public Safety Article filed in the District Court during fiscal 2018. The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that according to the Maryland Sentencing Guidelines Database, MSCCSP did not receive information for any individuals convicted of violating § 9-109(a) in the State’s circuit courts during fiscal 2018.

According to the Office of the State Fire Marshal (OSFM), enforcement of the provisions affected by the bill often involves the issuance of an abatement order, typically requiring that a violator come into compliance within five days. OSFM advises that most people comply with such an abatement order. If a person does not comply, then OSFM pursues a summons with the District Court. OSFM does not have the authority to enter a single-family dwelling unless another problem exists, such as a fire. OSFM advises that an abatement order requiring compliance within five days is not issued in situations where it is not practical, such as when a house has sustained fire damage requiring repairs that will take an extensive amount of time to complete.

**State Expenditures:** The District Court advises that the bill may require revision and reprinting of the civil citation form to incorporate the bill’s provisions, at a one-time cost of \$24,000 in fiscal 2020, as well as programming changes. According to the court, the form is reprinted on an as-needed basis, not annually. The Department of Legislative Services advises that, given the frequency of legislative changes to and creation of civil offenses, this is a routine function of the Judiciary and can be incorporated into regular budgetary functions.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 117 (Senator McCray) - Judicial Proceedings.

**Information Source(s):** City of Laurel; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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