

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 830
Judiciary

(Delegate Dumais, *et al.*)

Criminal Law - Organized Retail Theft

This bill (1) alters a penalty under the general theft statute; (2) clarifies the venue for prosecution of a case involving multiple thefts in multiple counties; (3) expands the authority of a police officer to make a warrantless arrest for theft; and (4) requires that if a court finds that a defendant committed “organized retail theft,” the finding must be included in the court record and reported to the Criminal Justice Information System Central Repository (CJIS).

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

General Theft Statute

Under the general theft statute, a person may not, under specified circumstances (1) willfully or knowingly obtain or exert unauthorized 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 delivered under a mistake as to the identity of the recipient or nature or amount of the property; or (5) obtain the services of another that are available only by compensation by deception or with knowledge that the services are provided without the provider's consent. A violator is required to restore the owner's property or pay the owner the value of the property or services and is subject to the penalties listed below:

<u>Value of Property and/or Services</u>	<u>Maximum Penalty</u>
Less than \$100*	Misdemeanor – 90 days imprisonment and/or \$500 fine
At least \$100 but less than \$1,500*	Misdemeanor – 6 months imprisonment and/or \$500 fine (first conviction) or 1 year imprisonment and/or \$500 (second or subsequent conviction)
Less than \$1,500 (four or more prior theft convictions)**	Misdemeanor – 5 years imprisonment and/or \$5,000 fine
At least \$1,500 but less than \$25,000	Felony – 5 years imprisonment and/or \$10,000 fine
At least \$25,000 but less than \$100,000	Felony – 10 years imprisonment and/or \$15,000 fine
\$100,000 or more	Felony – 20 years imprisonment and/or \$25,000 fine

*Subject to two-year statute of limitations.

**Subject to specified notice requirements.

Section 7-110 of the Criminal Law Article specifies presumptions and permitted and prohibited defenses to the crime of theft.

Altered Penalties

As noted above, a person who has four or more prior theft convictions and is convicted of theft of property/services valued at less than \$1,500 is subject to increased penalties. The bill (1) lowers the minimum number of prior theft convictions for this penalty to three and (2) eliminates the requirement that a State's Attorney provide notice meeting specified criteria prior to seeking this penalty.

Scheme/Continuing Course of Conduct and Venue

When a person commits a theft under one scheme or continuing course of conduct, whether from the same or *several sources*, the conduct may be considered as one crime and the

value of the property or services may be aggregated in determining whether the theft is a felony or misdemeanor.

The bill (1) applies this provision to a theft committed against the same or *multiple victims* and (2) specifies that multiple thefts committed by the same person in multiple counties under one scheme or continuing course of conduct may be aggregated and prosecuted in any county in which any one of the thefts occurred.

Specific Crimes Subject to a Warrantless Arrest

Under current law, a police officer may make a warrantless arrest if the police officer has probable cause to believe:

- that the person has committed a specified crime; and
- that unless the person is arrested immediately, the person (1) may not be apprehended; (2) may cause physical injury or property damage to another; or (3) may tamper with, dispose of, or destroy evidence.

The specified crimes include general theft or motor vehicle theft where the value of the property or service stolen is *less than \$1,000* or an attempt to commit these crimes.

The bill (1) increases the maximum value for a warrantless arrest for theft to *\$1,500* (the current threshold for misdemeanor theft); (2) specifies that a theft involving property/services valued at less than \$1,500 committed by a person with three or more prior theft convictions (per the bill) is eligible for a warrantless arrest; and (3) removes theft of a motor vehicle valued at less than \$1,000 from the list of specified crimes.

Organized Retail Theft – Court Finding

Under the bill, “organized retail theft” means the commission, either alone or with one or more other persons, of a series of thefts of retail merchandise from one or more retail merchants with the intent to (1) return the merchandise to the merchant for value or (2) resell, trade, or barter the merchandise for value.

Under the bill, if a defendant is convicted of or receives a probation before judgment for general theft under § 7-104 of the Criminal Law Article, on request of the State’s Attorney, the court must make a finding of fact based on evidence produced at trial as to whether the crime is “organized retail theft.” The State has the burden of proving by a preponderance of the evidence that the crime is organized retail theft.

If the court finds that the crime is organized retail theft, that finding must become part of the court record for purposes of reporting to CJIS.

Background: The Division of Correction advises that during fiscal 2019, it conducted intakes on four individuals for one or more of the offenses relating to theft schemes involving at least \$1,500. Three of the four individuals had only one offense. One inmate had four offenses of the same type, which were all from the same county.

Exhibit 1 includes data on the number of general theft violations and convictions in the trial courts during fiscal 2019. Data is not readily available on how many defendants had prior convictions for theft.

Exhibit 1
General Theft – Violations and Convictions in the
District Court and the Circuit Courts
Fiscal 2019

<u>Charge</u>	<u>District Court Violations</u>	<u>District Court Convictions</u>	<u>Circuit Court Violations</u>	<u>Circuit Court Convictions</u>
Theft Less than \$100	12,242	1,444	2,154	149
Theft \$100 to \$1,500	17,598	1,707	5,084	592
Theft \$1,500 to \$25,000	5,857	201	2,501	225
Theft \$25,000 to \$100,000	501	13	109	16
Theft \$100,000+	65	2	47	7
Theft Scheme – \$100 to \$1,500	921	81	218	33
Theft Scheme – \$1,500 to \$25,000	870	60	399	83
Theft Scheme – \$25,000 to \$100,000	64	4	115	15
Theft Scheme – \$100,000+	25	0	47	12

Source: Maryland Judiciary

Additional Information

Prior Introductions: None.

Designated Cross File: SB 598 (Senators Cassilly and Ready) - Judicial Proceedings.

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

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rh/aad

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