

MARYLAND RETAILERS ASSOCIATION

The Voice of Retailing in Maryland



SB745 – Criminal Organizations – Penalties, Procedure, and Elements Judicial Proceedings Committee March 3, 2020

Position: SUPPORT WITH AMENDMENTS

Background: SB745 makes updates to the Criminal Law Article of the Maryland Code, including changing “criminal gang” to “criminal organization”.

Comments: The Maryland Retailers Association supports SB745, which would update the Criminal Law Article of the Maryland Code to more accurately reflect organized criminal activity in the state and would allow law enforcement in Maryland to better address such activity. Though the fiscal note predicts no small business effect, we believe that updating the Code to address a wider array of criminal activity will result in decreased theft across the state. To that end, we would recommend that SB745 be amended to also define and refer to organized retail crime.

Organized criminal activity, particularly organized retail crime, has a major negative impact on the retail business community in Maryland and has serious consumer safety implications. Many organized theft rings sell stolen products through illegal distribution channels which result in products eventually being sold to consumers past their expiration date or after having been stored improperly. Popular items that are typically stolen and redistributed in this manner include infant formula and over-the-counter medicines, which can present a danger to consumers when not monitored properly. As such, combating organized retail theft is beneficial to retailers and consumers alike.

Thank you for your consideration. Our proffered amendments are as follows:

Repealing and reenacting, with amendments:

Article – Criminal Law

Section 7–103(f)

(f) (1) When theft is committed in violation of this part under one scheme or continuing course of conduct, whether from the same or [several sources] **MULTIPLE VICTIMS:**

[(1)] (I) the conduct may be considered as one crime; and

[(2)] (II) the value of the property or services may be aggregated in determining whether the theft is a felony or a misdemeanor.



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(2) 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.

Repealing and reenacting, with amendments:

Article – Criminal Law

7-104(g)

(4) (I) [Subject to paragraph (5) of this subsection, a] A person who has [four] **THREE** or more prior convictions under this subtitle [and who is convicted of] **MAY NOT COMMIT** theft of property or services with a value of less than \$1,500 under paragraph (2) of this subsection.

(II) A PERSON WHO VIOLATES SUBPARAGRAPH (I) OF THIS PARAGRAPH is guilty of a misdemeanor and:

[(i)] **1.** is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both; and

[(ii)] **2.** shall restore the property taken to the owner or pay the owner the value of the property or services.

[(5) The court may not impose the penalties under paragraph (4) of this subsection unless the State's Attorney serves notice on the defendant or the defendant's counsel before the acceptance of a plea of guilty or nolo contendere or at least 15 days before trial that:

(i) the State will seek the penalties under paragraph (4) of this subsection;

and

(ii) lists the alleged prior convictions.]

Article – Criminal Procedure

Section 2-203(b)

(4) a theft crime where the value of the property or services stolen is less than [\$1,000] **\$1,500** under § 7-104 [or § 7-105] of the Criminal Law Article, **INCLUDING § 7-104(G)(4) OF THE CRIMINAL LAW ARTICLE**, or an attempt to commit the crime;

Adding to:

Article – Criminal Procedure

Section 6-235



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(A) IN THIS SECTION, “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.

(B) (1) IF A DEFENDANT IS CONVICTED OF OR RECEIVES A PROBATION BEFORE JUDGMENT DISPOSITION FOR THEFT UNDER § 7-104 OF THE CRIMINAL LAW ARTICLE, ON REQUEST OF THE STATE’S ATTORNEY THE COURT SHALL MAKE A FINDING OF FACT BASED ON EVIDENCE PRODUCED AT TRIAL AS TO WHETHER THE CRIME IS ORGANIZED RETAIL THEFT.

(2) THE STATE HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE CRIME IS ORGANIZED RETAIL THEFT.

(C) IF THE COURT FINDS THAT THE CRIME IS ORGANIZED RETAIL THEFT UNDER SUBSECTION (B) OF THIS SECTION, THAT FINDING SHALL BECOME PART OF THE COURT RECORD FOR PURPOSES OF REPORTING TO THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY UNDER § 10-215 OF THIS ARTICLE.



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