

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 435 (Senators Gallion and Folden)
Judicial Proceedings

Criminal Law – Crimes of Arson – Prohibitions and Penalties

This bill prohibits a person from committing a “crime of arson” that causes an injury to a firefighter during the response to the fire or the efforts to suppress the fire. A violator is guilty of a felony and subject to imprisonment for up to 10 years. A sentence imposed for a violation of the bill’s prohibition must be separate from and run consecutive to a sentence imposed for any crime based on the act establishing the violation.

Fiscal Summary

State Effect: Potential minimal increase in incarceration expenditures due to the bill’s penalty provision. The Judiciary and the Office of the Public Defender (OPD) can handle the bill’s requirements with existing budgeted resources, as discussed below. Revenues are not affected.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: “Crime of arson” means a violation, an attempt to commit a violation, or a conspiracy to commit a violation of:

- § 6-102 of the Criminal Law Article (arson in the first degree);
- § 6-103 of the Criminal Law Article (arson in the second degree);

- § 6-104 of the Criminal Law Article (malicious burning of personal property in the first degree);
- § 6-105 of the Criminal Law Article (malicious burning of personal property in the second degree);
- § 6-106 of the Criminal Law Article (burning with intent to defraud);
- § 6-108 of the Criminal Law Article (burning trash container); or
- § 5-704 of the Natural Resources Article (maliciously setting fires).

Current Law:

Arson

A person is prohibited from willfully and maliciously setting fire to or burning a dwelling or a structure in or on which an individual who is not a participant is present. A violator is guilty of the felony of arson in the first degree and, on conviction, is subject to imprisonment of up to 30 years, a fine of up to \$50,000, or both.

A person is guilty of arson in the second degree if the person willfully or maliciously sets fire to or burns a dwelling or structure that belongs to them or to another. This offense is a felony, punishable by imprisonment for up to 20 years and/or a fine of up to \$30,000.

It is not a defense to a prosecution for either arson in the first or second degree that the person owns the property that was set fire to or burned.

Malicious Burning

A person may not willfully and maliciously set fire to or burn the personal property of another. A violator causing property damage of at least \$1,000 is guilty of the felony of malicious burning in the first degree, which is punishable by imprisonment for up to five years, a fine of up to \$5,000, or both. A violator causing less than \$1,000 in property damage is guilty of the misdemeanor of malicious burning in the second degree, which is a misdemeanor punishable by imprisonment for up to 18 months, a fine of up to \$500, or both.

Burning with Intent to Defraud

A person who sets fire to or burns property of any kind with the intent to defraud another is guilty of a misdemeanor and, on conviction, is subject to imprisonment for up to five years, a fine of up to \$5,000, or both.

Burning a Trash Container

A person may not willfully and maliciously set fire to or burn the contents of a dumpster or trash receptacle that belongs to another. A violator is guilty of a misdemeanor and subject to imprisonment of up to 30 days, a fine of up to \$500, or both.

Maliciously Setting Fires

An individual or corporation that willfully, maliciously, or with intent, sets on fire, or causes to be set on fire, any woods, brush, grass, grain, or stubble is guilty of a misdemeanor and, on conviction, is subject to a fine of at least \$250 but no more than \$2,000 and/or imprisonment for at least 30 days and up to 5 years.

Inchoate Crimes

Inchoate crimes reflect steps taken toward the commission of another crime (the substantive crime) that are serious enough that they are considered criminal behavior worthy of punishment. An attempt to commit a crime or a conspiracy to commit a crime is referred to as an “inchoate” crime. Inchoate crimes are generally common law crimes. However, some inchoate crimes (*e.g.*, attempted murder, rape, and robbery) have been codified as statutory offenses. Unless prescribed by statute, common law crimes do not have a specified penalty; the sentence is within the reasonable discretion of the judge and must not constitute cruel and unusual punishment.

State Expenditures: The bill is not expected to materially affect State incarceration expenditures or workloads for the Judiciary or OPD.

Department of Public Safety and Correctional Services

General fund expenditures may increase minimally as a result of the bill’s incarceration penalty due to more people being committed to State correctional facilities for longer periods of time. The number of people convicted of this proposed crime is expected to be minimal.

Judiciary

The Judiciary advises that any impact on its operations from the bill’s implementation should be minimal and can be absorbed with existing budgeted resources.

Exhibit 1 contains information for fiscal 2023 on the number of violations (charges) filed and convictions in the District Court and circuit courts for the offenses defined under the bill as a crime of arson and the number of sentences imposed in the circuit courts for those

offenses. The Judiciary and the Maryland State Commission on Criminal Sentencing Policy advise, respectively, that it was not possible to identify how many of the violations filed or convictions or sentences imposed in fiscal 2023 for a crime of arson involved an injury to a firefighter.

**Exhibit 1
Crimes of Arson
Fiscal 2023**

<u>Charge</u>	<u>District Court Violations Filed/Guilty Dispositions¹</u>	<u>Circuit Court Violations Filed/Guilty Dispositions</u>	<u>MSCCSP Circuit Court Convictions (Individuals/Counts)²</u>
Criminal Law Article, § 6-102 (Arson in the First Degree)	80/0	77/37	41 indiv./44 counts
Criminal Law Article, § 6-103 (Arson in the Second Degree)	76/0	77/16	24/24
Criminal Law Article, § 6-104 (Malicious Burning of Personal Property in the First Degree)	55/0	65/7	8/8
Criminal Law Article, § 6-105 (Malicious Burning of Personal Property in the Second Degree)	102/8	45/9	12/12
Criminal Law Article, § 6-106 (Burning w/ Intent to Defraud)	4/1	1/0	1/1
Criminal Law Article, § 6-108 (Burning a Trash Container)	8/0	1/0	0/0
Natural Resources Article, § 5-704 (Maliciously Setting Fires)	n/a	n/a	0/0

MSCCSP: Maryland State Commission on Criminal Sentencing Policy
n/a: not available

¹ A violation is a charge filed with the court. It is not a conviction, and one person may be associated with multiple violations.

² Reflects data from the Maryland State Sentencing Guidelines Database for sentencing information received by MSCCSP for individuals sentenced in the State's circuit courts.

Sources: Maryland Judiciary; Maryland State Commission on Criminal Sentencing Policy

Office of the Public Defender

OPD advises that the bill could result in new cases and require it to devote additional resources to existing clients charged with the new crime. Accordingly, OPD advises that the bill necessitates the hiring of one full-time assistant public defender, at a cost of \$89,686 in fiscal 2025 and increasing to \$122,681 by fiscal 2029. The Department of Legislative Services (DLS) advises that the bill is unlikely to warrant the hiring of an additional attorney, as any increase in OPD's workload is expected to be minimal and absorbable within existing resources.

DLS notes that any individual charged under the bill would already be facing a charge for a predicate crime under existing statute; thus, the bill would not require OPD to take on any new clients. The bill's impact to OPD, if any, would be attributable to having to defend a small number of existing clients against a new charge that arises out of the same alleged conduct that led to them being charged with a crime of arson.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

Fiscal Note History: First Reader - February 8, 2024
km/aad

Analysis by: Ralph W. Kettell

Direct Inquiries to:
(410) 946-5510
(301) 970-5510