

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**

House Bill 668 (Delegates Doory and Getty)  
(Committee to Revise Article 27 – Crimes and Punishments)

Judiciary

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**Theft, Bad Check, and Credit Card Crimes - District Court Offenses**

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This bill establishes separate offenses for persons committing theft, obtaining value with a bad check, or committing a credit card crime for value of less than \$100. Each is a misdemeanor, punishable by imprisonment for up to 90 days, a maximum fine of \$500, or both.

Charges must be filed in District Court.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund fine revenues to the extent that the bill results in a shifting of cases from the circuit courts to the District Court. Potential minimal decrease in general fund incarceration expenditures to the extent that defendants receive shorter sentences for theft offenses pursuant to the bill.

**Local Effect:** Potential minimal decrease in fine revenues to the extent that the bill results in a shifting of cases from the circuit courts to the District Court. Potential minimal decrease in incarceration expenditures to the extent that defendants receive shorter sentences for theft offenses pursuant to the bill.

**Small Business Effect:** Minimal.

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## Analysis

**Current Law:** A person who knowingly obtains unauthorized control over property with the intent of depriving the owner of its use is guilty of theft. It is a crime to obtain property or services by bad check. It is a crime to obtain property, goods, or services by credit card theft, forgery or, in other ways specified in statute, falsely presenting a credit card.

These crimes are treated similarly in that they are designated misdemeanors if the value unlawfully taken is less than \$500. The crimes are treated as felonies if the value of the property taken is \$500 or more. For a misdemeanor, the violator is subject to a maximum fine of \$500, imprisonment for up to 18 months, or both, and must restore the property or pay the value to the owner. For a felony, a violator is subject to imprisonment for up to 15 years, a maximum fine of \$1,000, or both. The violator must restore the property or pay the value to the owner.

There is not a separate offense for the unlawful taking of value, property, or services, whether by theft, bad check, or credit card if the value of the item taken is less than \$100. Those offenses are treated as misdemeanors and are subject to the penalties noted above.

Although exclusive original jurisdiction over misdemeanors rests with the District Court, the District Court is deprived of jurisdiction if the accused is entitled to and demands a jury trial, prior to trial in the District Court. A defendant is not generally entitled to a jury trial unless the penalty for the offense authorizes imprisonment for more than 90 days (§ 4-302(e)(2)(i) of the Courts and Judicial Proceedings Article). However, § 4-302(e)(2)(ii) provides that if the applicable penalty exceeds 90 days imprisonment, a defendant may not receive a jury trial if the prosecutor recommends in open court a maximum penalty of 90 days, the judge agrees, and the judge agrees not to increase the defendant's bond if an appeal is noted. The constitutionality of this provision, known as the "Gerstung Rule," has been called into question in a series of cases, including cases involving theft (see discussion below).

If the defendant appeals a conviction at the District Court level, he or she would be entitled to a *de novo* jury trial in circuit court.

**Background:** The bill creates new crimes for theft, bad checks, and credit cards that would automatically be tried in District Court. Under § 4-302 (e)(2)(i), defendants accused of these new crimes would be tried by the District Court judge. Because the maximum imprisonment penalty for these crimes is 90 days, the statute provides that the defendant is not entitled to a jury trial.

However, the Maryland Court of Appeals has generally upheld the constitutional right of a defendant to demand a jury trial in theft cases. In the case *Kawamura v. State*, 299 Md. 278 (1984), the court reviewed earlier decisions in *State v. Glenn*, (54 Md. 572 (1880) and *State v. Danner*, 89 Md. 20 (1899) and stated that it was permissible to designate certain minor offenses for trial without a jury. The court also observed that it is difficult to "...define with precision the class of cases that could be so tried...[without a jury] (*State v. Danner*, 89 Md. at 226).

In the *Kawamura* case, the petitioner was charged with the theft of goods valued at less than \$300. The offense was a misdemeanor, punishable by imprisonment for up to 18 months or a maximum fine of \$500. Kawamura requested a jury trial, but the District Court judge denied his request based on the "Gerstung Rule." The petitioner claimed that the "Gerstung Rule" violated his right to a jury trial under the Maryland and federal constitutions. On appeal, the Court of Appeals ruled that Kawamura had been wrongfully denied his right to a jury trial. The court further stated that "it is the maximum sentence and place of incarceration established by the legislature for the particular offense which controls, and not the maximum sentence or place of incarceration decided by a court in a particular case."

The court also observed that ultimately, the nature of the offense is more important than the incarceration penalty or where the sentence may be served. The right to jury trial was upheld by the Court of Appeals in the *Danner* case when the imprisonment term for theft was only 30 days.

**State Expenditures:** General fund expenditures could decrease to the extent that defendants receive shorter sentences for theft pursuant to the bill. Although a precise estimate cannot be made without actual experience under the bill, any such decrease is expected to be minimal. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$1,850 per month. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$300 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2003 are estimated to range from \$10 to \$61 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The bill is not expected to affect the total number of people charged with theft offenses.

**Local Expenditures:** Expenditures could decrease minimally to the extent that defendants receive shorter sentences for theft offenses pursuant to the bill.

Counties pay the full cost of incarceration for the first 90 days of the sentence. Per diem operating costs of local detention facilities are expected to range from \$20 to \$84 per inmate in fiscal 2003.

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### **Additional Information**

**Prior Introductions:** HB 825 of the 1996 session was a similar bill, which received an unfavorable report from the Judiciary Committee. The cross-filed bill, SB 472, passed the Senate and was referred to the House Judiciary Committee, where it received an unfavorable report.

**Cross File:** SB 755 (Senators Stone and Hughes) (Committee to Revise Article 27 – Crimes and Punishments) – Judicial Proceedings.

**Information Source(s):** Department of Legislative Services

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