

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 693

(Delegate Niemann)

Judiciary

Motor Vehicle Theft - Two Prior Convictions - Mandatory Minimum Penalty

This bill provides that a person who is convicted of motor vehicle theft or general theft involving a motor vehicle after September 30, 2004, and who has two prior convictions of such a theft, must be sentenced to a mandatory minimum, nonsuspendable sentence of five years.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures due to the bill's mandatory minimum penalty provision.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Under the State's prohibition against motor vehicle theft, a person may not knowingly and willingly take a motor vehicle out of the owner's lawful custody, control, or use without the owner's consent. A violator is guilty of the felony of taking a motor vehicle and subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000. The convicted person must restore the motor vehicle or, if unable to, pay the owner its full value. These provisions do not preclude prosecution for general theft. If a person is convicted of motor vehicle theft and general theft for the same act or transaction, the motor vehicle theft conviction must merge for sentencing purposes with the conviction for theft.

A person convicted of theft of property or services with a value of \$500 or more is guilty of a felony and subject to maximum penalties of imprisonment for 15 years and/or a fine of \$25,000. A person convicted of theft of property or services with a value of less than \$500, is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500. Regardless of value, the convicted person must restore the owner's property or pay the owner for the value of the property or services.

Under the State's prohibition against the unauthorized removal of property, without the permission of the owner, a person may not enter or be on the premises of another, and take and carry away from the premises or out of the custody or use of the other, or the other's agent, or a governmental unit any property, including: (1) a vehicle; (2) a motor vehicle; (3) a vessel; or (4) livestock. A violator is guilty of a misdemeanor and subject to penalties of imprisonment for at least six months and not more than four years and/or a fine of at least \$50 and not more than \$100. The convicted person must restore the property taken and carried away or, if unable to, must pay the owner its full value. It is not a defense that the person intends to hold or keep the property for the person's present use and not with the intent of appropriating or converting the property.

State Expenditures: In fiscal 2003, the Division of Correction (DOC) had an intake of 299 persons sentenced for "auto theft – larceny," with an average sentence of about 23 months, and also had an intake of 43 persons sentenced for "auto theft – other," with an average sentence of 88 months. It is not known how many of those persons had any prior convictions for such thefts. Typically a person sentenced for these offenses would tend to serve 50% of the full sentence, so that the average sentence served for auto theft – larceny would be 11.5 months and 44 months for a person sentenced for auto theft – other.

In any case, general fund expenditures could increase as a result of the bill's mandatory minimum penalty due to people being committed to DOC facilities for longer periods of time.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Under the bill's mandatory minimum incarceration penalty the average time served would be 60 months, rather than 11.5 or 44 months, an increase of 48.5 or 16 months per

person. Assuming the variable inmate costs of \$120 per month, State costs could increase by \$5,820 (48.5 months x \$120) or \$1,920 (16 months x \$120) for each person imprisoned under the bill. For illustrative purposes only, if the number of persons sentenced for these offenses in fiscal 2003 is typical, and if half of those had had two prior convictions, State costs could increase by \$870,090 (50% of 299 persons x \$5,820) plus \$41,280 (50% of 43 persons x \$1,920), or a total of \$911,370 over a five-year period for each annual intake for the covered offenses. Such effects could not begin to be felt until fiscal 2006.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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ncs/jr

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