

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 513

(Chairman, Judicial Proceedings Committee)
(By Request – Maryland Judicial Conference)

Judicial Proceedings

Judiciary

**Criminal Law - Theft, Bad Checks, and Credit Card Crimes - District Court
Offenses**

This bill establishes new procedures for dealing with theft, bad checks, and credit card offenses where the value of the goods, services, and other property involved in the offense does not exceed \$100.

Fiscal Summary

State Effect: The bill is not expected to have a material effect on District Court finances. Decrease in Division of Correction (DOC) incarceration costs to the extent fewer persons are incarcerated in DOC facilities.

Local Effect: Potential decrease in circuit court expenditures if the bill results in significantly fewer jury trials being heard in circuit court. Increase in local expenditures to the extent additional persons are held in local detention facilities.

Small Business Effect: None.

Analysis

Bill Summary: Covered crimes include:

- theft;
- obtaining property or services by bad check;

- obtaining property by using a counterfeit or stolen credit card or misrepresenting oneself to be the holder of a credit card;
- honoring stolen or counterfeit credit cards;
- misrepresenting to a credit card issuer that goods and services have been provided; and
- receiving property by stolen, counterfeit, or misrepresented credit card.

A person convicted of theft of property or services with a value of less than \$100 is guilty of a misdemeanor and is subject to a maximum penalty of 90 days imprisonment and/or a \$500 fine. The person must restore the property taken to the owner or pay the owner the value of the property or services.

If it cannot be determined whether the value is more or less than \$100, the value is deemed to be less than \$100. It is not a defense to a crime involving \$100 or less that the value of the property or services at issue is more than \$100.

An action for theft of property or services with a value of less than \$100 must be commenced within two years after commission of the crime. Unless specifically charged by the State, this crime may not be considered a lesser included crime of any other crime.

Current Law: Current law differentiates between theft of property or services with a value of less than \$500 and a value of more than \$500. Theft of property or services with a value of less than \$500 is a misdemeanor, with a maximum penalty of 18 months imprisonment and/or a \$500 fine. Theft of property or services with a value of \$500 or more is a felony, with a maximum penalty of 15 years imprisonment and/or a \$25,000 fine.

Misdemeanors are generally heard in the District Court and felonies are heard in the circuit courts. However, if the charge is one for which the defendant is entitled to and demands a jury trial, the case goes to circuit court.

Background: This bill is one of several that the Maryland Judicial Conference requested be introduced in the 2004 session in an effort to reduce the number of jury trials held in circuit courts. Other bills include cross filed bills SB 517 and HB 745, which divide misdemeanors into Class A and Class B misdemeanors and impose a maximum penalty of 90 days imprisonment for Class B misdemeanors; and cross filed bills SB 516 and HB 615, which provide that, in a criminal appeal that is tried *de novo*, there is no right to a jury trial unless the offense charged is subject to a penalty of imprisonment of more than 90 days, unless there is a constitutional right to a jury trial for the offense.

The right to a trial by jury is guaranteed in Articles 5, 21, and 23 of the Maryland Declaration of Rights. In the State's two-tiered trial court system, less serious cases (typically misdemeanors) generally originate in the District Court while felonies and other more serious cases originate in the circuit courts. However, jury trials are only available in circuit court. As explained above, if a criminal case originates in the District Court, and the defendant is entitled to a jury trial, the defendant may file a "jury trial prayer," which transfers the case to circuit court.

Beginning in the 1970s, the numbers of jury trial prayers increased significantly, causing a workload problem in the circuit courts. The problem has persisted since that time to varying degrees. It is known that jury trials are often requested for reasons other than to actually obtain a jury trial, including delay, avoidance of a particular judge or prosecutor, and convenience of defense counsel. Because most of these cases are resolved at the circuit court level prior to the trial phase, only a small fraction of jury demands ultimately result in jury trials. Nevertheless, a large number of jury demands does burden the system.

Judicial committees were formed in the late 1970s and mid-1980s to study this issue and recommend solutions, spawning a number of corrective efforts. In 1981, the so-called "Gerstung Rule" was enacted, which eliminates a defendant's right to a jury trial at the initial trial level if the judge agrees not to impose a sentence of imprisonment of more than 90 days. The extent to which the Gerstung Rule prompted a decrease in the number of jury demands in the years after its implementation is unclear. In any event, the Court of Appeals held the rule to be unconstitutional as applied to the specific offenses charged in three cases in the mid-1980s. See *Kawamura v. State*, 299 Md. 276 (1984); *Fisher v. State*, 305 Md. 357 (1986); and *State v. Huebner*, 305 Md. 601 (1986).

The codified Gerstung Rule was an attempt by the General Assembly to provide clear guidelines with respect to a defendant's right to a jury trial in the first instance (election of a jury trial in the circuit court in lieu of being tried without a jury in the District Court) versus obtaining a jury trial through a defendant's right to a *de novo* appeal to the circuit court following a conviction without a jury in the District Court. By establishing a 90-day penalty threshold, the General Assembly attempted to distinguish petty offenses that under common law historically did not trigger the right to be tried by a jury from other offenses to which the constitutional right applied. The General Assembly was trying to define the circumstances under which a defendant did not have a right to a jury trial in the first instance in order to reduce the number of jury trial prayers.

The *Kawamura*, *Fisher*, and *Huebner* holdings made clear that it is not merely the length of sentence that determines a petty offense or the right to deny a defendant the right to a jury trial at the initial trial level. In those cases, the Court of Appeals outlined the factors

that must be considered in determining whether the State constitutional right attaches to an offense at the initial trial level. The court analysis involves whether the offense (1) had historically been considered a petty offense subject to the jurisdiction of justices of the peace or historically had been tried before juries; (2) is an infamous crime or is subject to infamous punishment; (3) is considered to be a “serious crime;” (4) has a significant maximum statutory penalty; and (5) is subject under statute to incarceration in the penitentiary. The relative lack of clarity in these cases as to which offenses are entitled to a jury trial in the first instance may be a contributing factor in the continued high numbers of jury trial prayers.

Jury demands have again increased significantly. Statewide, the number of jury trial prayers increased by over 24% between fiscal 1998 and 2002, and cases transferred to circuit court pursuant to jury trial prayers composed approximately 44% of the total number of criminal filings in circuit court in fiscal 2002. Consequently, at the request of the Conference of Circuit Judges, Chief Judge Bell of the Court of Appeals established an ad hoc committee, chaired by Judge William S. Horne, to study the issue and recommend possible solutions. Unlike the previous committees that studied this issue, which were composed almost exclusively of judges, this committee included representatives of all sectors of the criminal justice system. The committee convened on August 13, 2003, and held five meetings including an organizational meeting, two public hearings, and two work sessions.

State Expenditures: In 2002, 144,074 thefts were reported in Maryland. Although the number of these cases in which a prosecutor would charge an alleged violator with the offense of theft of goods and services with a value under \$100 cannot be accurately predicted at this time, the number could be substantial. Since these defendants will potentially receive shorter sentences than those charged under current law, the bill could result in fewer people being incarcerated in DOC facilities.

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. 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.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. 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 2005 are estimated to range from \$14 to \$58 per inmate

depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities.

Local Expenditures: Circuit court expenditures could decrease if the bill results in significantly fewer circuit court jury trials. The extent of any such decrease cannot be reliably predicted at this time.

The maximum 90-day sentence for theft of goods and services with a value of under \$100 could lead to increased costs for local detention facilities. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: None.

Cross File: HB 926 (Chairman, Judiciary Committee) (By Request – Maryland Judicial Conference) – Judiciary.

Information Source(s): Department of Public Safety and Correctional Services, Judiciary (Administrative Office of the Courts), State’s Attorneys’ Association, Department of Legislative Services

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