

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 427

(Senator McFadden)

(By Request – Baltimore City Administration)

Judicial Proceedings

**Criminal Law - Value of Property or Services in Theft and Related Crimes -
Increase in Threshold**

This bill alters the threshold value of property or services, or damage to property, for determining whether specified theft-related offenses would be considered and penalized as felonies or misdemeanors. The threshold increases from \$500 to \$1,000 for criminal actions relating to extortion, including extortion by a State or local government officer or employee; malicious destruction of property; theft; obtaining property or services by bad check; obtaining property by counterfeiting, theft, or misrepresentation; fraud; identity fraud; Medicaid fraud; receiving property by stolen, counterfeit, or misrepresented credit card; and exploitation of vulnerable adults. The bill also alters specified charging documents and the form of notice of a dishonored check to reflect the applicable changes in the threshold.

Fiscal Summary

State Effect: Minimal increase in general fund revenues, and increase and decrease in expenditures for the Division of Correction (DOC), due to the bill's changes to penalty thresholds.

Local Effect: Minimal decrease in revenues and expenditures due to the bill's changes to penalty thresholds.

Small Business Effect: None.

Analysis

Current Law: The above cited offenses subject a violator to the various enumerated maximum misdemeanor and felony penalties, including imprisonment and/or fines, applicable to these offenses. For all covered offenses a property, service, or damage value of less than \$500 makes the offense a misdemeanor, while a value of \$500 or more makes the offense a felony.

Chapter 288 of 2000, introduced by the Committee to Revise Article 27, increased the value of property or services subject to penalties and offenses relating to theft, robbery, destruction of property, obtaining property or services by bad check, credit card offenses, and extortion from \$300 to \$500. These crimes include both misdemeanors and felonies.

This enactment revised and merged provisions so that there is one formula for an indictment, information, warrant, or charging document, which includes the ability to list the value of the property or service that is the subject of the robbery, for the purposes of charging felony theft. Related provisions required a jury instruction for determining the value of the property or service at, above, or below \$500.

Chapter 259 of 2000 revised and restated Medicaid fraud laws. Medicaid fraud crimes, and their applicable fines, terms of incarceration, civil penalties, and statutes of limitations were not substantively changed. Then current law provided a threshold of \$500 for a felony offense to have occurred. However, under new provisions relating to fraud and State health plans, the Act provided that, if the value of the money, health care services, or other goods or services involved is \$500 or more in the aggregate, a violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$100,000.

Chapter 579 of 2001 increased the amount of the collection fee, from \$25 to \$35, for which the maker or drawer of a dishonored check is liable to the holder if the check has not been paid within 30 days after the holder has sent a notice of dishonor. The Act made the civil liability of the writer of a dishonored check mandatory, rather than discretionary, and also increased, from \$25 to \$35, the amount that a court may order a defendant to pay as a collection fee for each bad check upon conviction of the offense of obtaining property or services by a bad check.

In addition, Chapter 579 increased, from \$300 to \$500, the threshold value of property or services for determining whether the dishonored check offense would be considered, and penalized as, a felony. Specifically, if the property or services has a value of \$500 or more, a violator is guilty of a felony and subject to maximum penalties of a fine of \$1,000 and/or imprisonment for 15 years. If the property or services has a value of less than \$500, a violator is guilty of a misdemeanor and subject to maximum penalties of a

fine of \$100 and/or imprisonment for 18 months. These changes in threshold were made to the form of notice of a dishonored check.

Chapter 509 of 2002 altered provisions pertaining to the crime of fraud involving personal identifying information. The Act, in part, provides that if a person possesses, obtains, or helps another to possess or obtain personal identifying information to get a benefit of \$500 or more, the violator is guilty of a felony and is subject to maximum penalties of a fine of \$5,000 and/or imprisonment for five years. If a person possesses, obtains, or helps another to possess or obtain personal identifying information from another to get a benefit of less than \$500, the violator is guilty of a misdemeanor and is subject to maximum penalties of a fine of \$5,000 and/or imprisonment for 18 months.

Chapters 479 and 480 of 2002 made it unlawful for a person to knowingly and willfully obtain by deception, intimidation, or undue influence the property of a vulnerable adult with the intent of depriving the adult of the property. A violator is subject to criminal penalties that vary depending on the value of the property taken. If the value of the property taken from the vulnerable adult is \$500 or more, the violator is guilty of a felony and is subject to maximum penalties of imprisonment for 15 years and/or a fine of \$10,000. If the value of the property taken is less than \$500, the violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500. Those convicted under the misdemeanor or felony provisions are required to restore the property taken or its value to the owner. If the owner is deceased, restoration must be made to the owner's estate.

Background: According to the most recent *Uniform Crime Report* (2002), there were 24,183 arrests statewide for "larceny-theft." Of that total, 4,298 such arrests were made in Baltimore City, 3,244 were made in Anne Arundel County, 2,056 were made in Prince George's County, and 2,080 were made in Montgomery County. The number or percentage of these arrests that qualified for a misdemeanor or felony charge is not known. It is also not known how many of the arrests resulted in successful prosecutions leading to imprisonment terms and/or fines.

DOC does not track data by the statutory offenses covered under this bill and does not know whether a person incarcerated for a covered offense was sentenced under misdemeanor or felony provisions based on the value of property, services, or damages involved in the offense.

Changing crimes from felonies to misdemeanors generally means: (1) that such cases will be filed in the District Court rather than the circuit courts; and (2) some persons will not, as a result of the misdemeanor conviction, be subject to enhanced penalty provisions, applicable to some offenses, for prior felony convictions. However, it is not known

whether a bench trial, as opposed to a jury trial, might spur fewer plea bargains and affect actual sentencing practices for these offenses.

State Revenues: Revenues could increase minimally as a result of the bill's changes since more such cases would be heard in the District Court.

State Expenditures: This bill could have an effect on the sentencing of perhaps hundreds of persons per year who commit offenses where the value of the property, services, or damages falls between \$500 and \$1,000. However, for any theft-related offense, it is believed that the vast majority of persons serving an imprisonment term in a DOC facility would have been convicted of a felony, rather than misdemeanor. Accordingly, it is expected that any savings for DOC under this bill would be minimal.

In any event, general fund expenditures could decrease as a result of the bill's changes to felony thresholds. 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 alleviate the need for existing prison facilities. Excluding overhead, the average cost of housing a DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month. However, general fund expenditures could also increase minimally as a result of the bill's changes due to increased payments to counties for reimbursement of inmate costs.

Any costs associated with changes to charging documents and existing computer programs in the courts are anticipated to be relatively small.

Local Revenues: Revenues could decrease minimally as a result of the bill's changes since fewer such cases would be heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's changes since more persons would be likely to be sentenced to terms of less than 18 months. 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 1260 (Delegate Marriott)(By Request – Baltimore City Administration)
– Judiciary.

Information Source(s): Judiciary (District Court, Administrative Office of the Courts),
Commission on Criminal Sentencing Policy, Department of Public Safety and
Correctional Services (Division of Correction), Department of Legislative Services

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lc/jr

Analysis by: Guy G. Cherry

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