

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 1265

(Delegates Frush and Vallario)

Judiciary

Judicial Proceedings

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**Criminal Law - Unauthorized Removal of Property - Elements of Crime**

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This bill repeals the requirement that a person enter or be on the premises of another for a conviction of the crime of taking and carrying away from the premises or out of the custody of another or use of the other, or the other's agent, or a governmental unit, any property without the permission of the owner of the property.

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**Fiscal Summary**

**State Effect:** None. The bill's changes should not affect any State operations or finances.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A person must enter or be on the premises of another to be in violation of the prohibition against taking and carrying away from the premises or out of the custody of another or use of the other, or the other's agent, or a governmental unit, any property without the permission of the owner of the property. A violator is guilty of a misdemeanor and subject to 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 do so, pay the owner the full value of the property.

It is not a defense to this crime that the person intended to temporarily hold or keep the property rather than keep or convert it.

**Background:** In *Allen v. State*, 171 Md. App 544 (2006), the Court of Special Appeals found, in part, that in the 2002 recodification of this offense (from Article 27, § 349) “the General Assembly, whether by design or not, substantively changed the law of unauthorized use. No longer does the offense have as one of two alternative means of committing it the mere unlawful removal of [the property] from the custody of another. Now, the offense has as a required element that the accused have entered or been present on premises of another from which the property is taken or carried away (or custody or use of it works a deprivation to the other), without permission of the owner.”

Chapter 26 of 2002, which created the new Criminal Law Article, intended to recodify existing laws without substantive change – primarily from the former Article 27. This bill eliminates, as an element of the crime in question, that the accused person enter or be on the premises of another for a conviction.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary, Department of Public Safety and Correctional Services, Department of Legislative Services

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mll/jr

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