

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 199

(Chair, Judicial Proceedings Committee) (By Request –
Departmental – Lottery)

Judicial Proceedings

Crimes - State Lottery - Theft of Tickets, Equipment, or Products

This departmental bill prohibits a person from knowingly or willfully obtaining or exerting unauthorized control over a “lottery ticket,” “equipment,” or “product” with the intent to deprive the State Lottery Agency, its licensed agents or retailers, or the purchaser of the lottery ticket of the ticket’s value or any prize winnings. The bill prohibits a person from knowingly presenting a stolen, counterfeit, altered, or misdelivered lottery ticket for a claim or payment. In addition, the bill provides that a person may not knowingly or willfully obtain or exert unauthorized control over agency equipment with the intent to deprive the agency, its licensed agents or retailers, or contractors of the value of the equipment or product. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$2,500.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions. This bill would not have a fiscal or operational effect on the State Lottery Agency.

Local Effect: Minimal increase in local revenues and expenditures due to the bill’s penalty provisions.

Small Business Effect: The State Lottery Agency has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The prohibitions established under this bill do not preclude prosecution for theft of a lottery ticket, equipment, or product under existing general theft provisions. A conviction for a violation of the provisions of this bill and theft must be merged for sentencing purposes.

Current Law: Under the general theft provisions, a person convicted of theft of property 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 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.

Chapter 130 of 2004 created a new petty theft sentencing category for existing theft, bad checks, and credit card offenses where the value of the goods, services, and other property involved in the offense is less than \$100. A violator is guilty of a misdemeanor and subject to maximum penalties of 90 days' imprisonment and/or a \$500 fine.

A person may not possess stolen personal property knowing that it has been stolen, or believing that it probably has been stolen, if the person: (1) intends to deprive the owner of the property; (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or (3) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

The following defenses to the crime of theft are not allowed:

- that the defendant has an interest in the property that was the subject of the theft if another also has an interest in or right to possess the property that the defendant is not entitled to infringe;
- that the property was taken, obtained, or withheld from a person who had obtained the property by illegal means; or
- that the value of the services or property was actually more than \$100 when petty theft has been charged.

It is a defense to the crime of theft that:

- the defendant acted under a good faith claim of right to the property involved;

- the defendant acted in the honest belief that the defendant had the right to obtain or exert control over the property as the defendant did;
- the property involved was that of the defendant's spouse, unless the defendant and the defendant's spouse were not living together as husband and wife and were living in separate residences at the time of the alleged theft; or
- in a case of theft of a trade secret, the defendant rightfully knew the trade secret, or the trade secret was available to the defendant from a source other than the owner.

Background: According to the State Lottery Agency, few of these cases have ever been referred for prosecution.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of these proposed crimes is expected to be minimal.

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 \$2,600 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 \$526 per month. Excluding medical care, the average variable costs total \$148 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 2009 are estimated to range from \$19 to \$71 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.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalty. 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 \$40 to \$129 per inmate in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Lottery Agency, Department of Public Safety and Correctional Services, Department of Legislative Services

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ncs/jr

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