

Department of Legislative Services  
 Maryland General Assembly  
 2010 Session

FISCAL AND POLICY NOTE  
 Revised

House Bill 347

(Delegate Serafini, *et al.*)

Judiciary

Judicial Proceedings

**Malicious Destruction - Property of Another - Definition and Foreclosure Notices**

This bill specifies a definition for the term “property of another” used in the existing malicious destruction statute. “Property of another” is defined as property in which a person other than the offender has an interest that the offender does not have the authority to defeat or impair, even though the offender also may have an interest in the property. The bill also requires a notice of foreclosure action, notice of impending foreclosure sale, and notice of eviction to include a paragraph informing the occupants of the residential property of the criminal sanctions for malicious destruction of property.

**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues from monetary penalties in District Court cases. Potential minimal increase in general fund expenditures if the bill’s provisions result in more individuals being incarcerated for malicious destruction of property.

**Local Effect:** Potential minimal increase in local revenues from monetary penalties in circuit court cases. Potential minimal increase in local expenditures if the bill’s provisions result in more individuals being incarcerated for malicious destruction of property.

**Small Business Effect:** None.

**Analysis**

**Current Law:** A person may not willfully and maliciously destroy, injure, or deface the real or personal property of another. A violator who causes at least \$500 of damage to the property is guilty of a misdemeanor and is subject to maximum penalties of

three years imprisonment and/or a \$2,500 fine. If the damage is valued at less than \$500, a violator is guilty of a misdemeanor and is subject to maximum penalties of 60 days imprisonment and/or a \$500 fine. If it cannot be determined from the evidence whether the value of the property damage is more or less than \$500, the value is deemed to be less than \$500.

In addition to the penalties listed above, a court must order a person convicted of causing malicious destruction by an act of graffiti to pay restitution and/or perform community service. State law defines “graffiti” as a permanent drawing, permanent painting, or a permanent mark or inscription on the property of another without the permission of the property owner. The current statutory definition does not refer to the graffiti’s effect on the value of the property.

A written notice of intent to foreclose must be sent to the mortgagor or grantor and the record owner at least 45 days before the filing of an action to foreclose a mortgage or deed of trust on residential property. State law prohibits an action to foreclose a mortgage or deed of trust on residential property from being filed until the later of 90 days after default or 45 days after a notice of intent to foreclose is sent. “Residential property” is defined as real property improved by four or fewer single-family dwelling units.

At the same time the mortgagor or grantor is served with all required documents, the person authorized to sell the residential property must send written notice to all occupants of the property. The notice must inform the occupants that a foreclosure sale of the property may occur at any time after 45 days from the date of the notice. The notice must also state that the person could be evicted, even if the person is a tenant and has paid all rent due and otherwise complied with the terms of the lease.

Written notice must also be sent to all occupants no earlier than 30 days and no later than 10 days prior to the date of the foreclosure sale, and a final notice must be sent after the entry of a judgment awarding possession of the property and before any attempt to execute the writ of possession. The person giving each notice must file an affidavit of compliance in the foreclosure proceeding after each notice is sent. If the foreclosure sale is postponed, no additional notice is required to be sent to the occupants of the property.

**Background:** According to the Department of Housing and Community Development, there were 50,200 foreclosure events in the State during calendar 2009. Foreclosure events include notices of mortgage loan defaults, notices of foreclosure sales, and lender purchases of foreclosed properties. While no data is available on the number of foreclosed homes vandalized or stripped of fixtures by previous owners or tenants, news reports from across the nation include accounts of such activity, which is usually the result of a former owner’s financial frustration or anger. In Arizona, Maricopa County

Attorney Andrew Thomas announced in August 2009 that the number of people charged with gutting vacant or foreclosed homes had significantly increased. Both the Federal Bureau of Investigation and local police in that state have made several arrests of individuals accused of stripping homes to sell the recovered items.

**State Revenues:** General fund revenues may increase minimally as a result of monetary penalties imposed in cases heard in the District Court.

**State Expenditures:** General fund expenditures may increase minimally if the bill's provisions expand the scope of individuals incarcerated for malicious destruction of property, resulting in more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs.

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 \$2,750 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 variable medical care and variable operating costs) is \$409 per month. Excluding all medical care, the average variable costs total \$182 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced 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 increase may minimally as a result of monetary penalties imposed in cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase may minimally if the bill's provisions expand the scope of individuals incarcerated for malicious destruction of property. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for

each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

**Small Business Effect:** Small businesses subject to the bill's notice requirements can include information regarding criminal penalties for applying graffiti or stripping a foreclosed residential property with existing resources.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), abc15.com, *The New York Times*, CNN.com, Department of Housing and Community Development, Department of Legislative Services

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Analysis by: Amy A. Devadas

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