

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 728
Judiciary

(Delegate Kramer)

Criminal Law - Felony Theft - Threshold Value

This bill decreases the minimum value of property or services for felony theft from \$1,000 to \$500. The bill makes conforming changes to the theft statute by (1) altering the misdemeanor theft statute to apply to property or services valued at less than \$500; and (2) making existing enhanced penalties for misdemeanor theft applicable to a person with two or more theft convictions who is convicted of theft of property or services valued at less than \$500. The bill also requires charging documents for theft offenses to reflect the new threshold amounts.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues from fewer monetary penalties in the District Court. Potential minimal increase in general fund expenditures from an increase in the number of people subject to the felony theft incarceration penalty under current law. Potential minimal decrease in general fund expenditures due to fewer cases being heard in the District Court.

Local Effect: Potential minimal increase in local revenues from more monetary penalties being imposed in the circuit courts. Potential minimal increase in local expenditures due to more cases being heard in the circuit courts.

Small Business Effect: None.

Analysis

Current Law: A person convicted of theft of property or services valued at less than \$100 is guilty of a misdemeanor and is subject to maximum penalties of imprisonment of 90 days and/or a \$500 fine. A person convicted of theft of property with a value of less than \$1,000 is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500.

Chapter 655 of 2009 increased the maximum property value for misdemeanor theft from \$500 to \$1,000 and created the three tiers of felony theft listed below:

| <u>Value of Property and/or Services</u> | <u>Maximum Penalty</u> |
|--|--|
| Between \$1,000 and \$10,000 | 10 years imprisonment and/or a \$10,000 fine |
| Between \$10,000 and \$100,000 | 15 years imprisonment and/or a \$15,000 fine |
| \$100,000 or more | 25 years imprisonment and/or a \$25,000 fine |

A person who has two or more theft convictions who is convicted of theft of property or services valued at less than \$1,000 is guilty of misdemeanor theft and subject to enhanced maximum penalties of five years imprisonment and/or a \$5,000 fine. Regardless of value, a person convicted of theft must restore the owner's property or pay the owner for the value of the property.

Background: Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court; and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense. According to the most recent *Uniform Crime Report* (2008), there were 133,983 reports of theft offenses statewide (referred to as larceny-theft) in 2008 (a 5% increase over 2007). There were also 27,069 arrests statewide (an increase of 13% over 2007). The following table shows crime reports and arrests in 2007 and 2008 for related larceny-theft offenses in the counties with the greatest activity.

| <u>Jurisdiction</u> | <u>Reports 2007</u> | <u>Reports 2008</u> | <u>Arrests 2007</u> | <u>Arrests 2008</u> |
|------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Anne Arundel County | 13,295 | 14,302 (+8%) | 3,448 | 3,861 (+12%) |
| Baltimore City | 17,077 | 17,635 (+3%) | 1,596 | 1,759 (+10%) |
| Baltimore County | 18,607 | 19,661 (+6%) | 4,663 | 5,599 (+20%) |
| Montgomery County | 18,181 | 19,678 (+8%) | 1,803 | 2,023 (+12%) |
| Prince George's County | 25,384 | 25,916 (+2%) | 2,980 | 3,747 (+26%) |

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.

In fiscal 2009, the Division of Correction (DOC) had 959 intakes for all theft convictions. The average sentence was 29 months. Of those intakes, 544 were for what DOC classifies as felony-theft offenses.

The Commission on Criminal Sentencing Policy advises that there were 654 convictions for felony theft of \$500 or more and 344 convictions for misdemeanor theft of less than \$500 in fiscal 2009. These numbers are not affected by the 2009 legislation, which had an effective date of October 1, 2009. Also, since the commission does not receive data from the District Court, the figures cited do not provide a comprehensive representation of the number of misdemeanor theft convictions in fiscal 2009.

State Revenues: General fund revenues may decrease minimally due to fewer monetary penalties being imposed in the District Court. The bill reduces the scope of misdemeanor theft, thereby reducing the number of misdemeanor theft cases in the District Court.

State Expenditures: General fund expenditures may decrease minimally due to fewer cases being heard in the District Court.

General fund expenditures may increase minimally due to the bill's expansion of the scope of felony theft resulting in people being committed to DOC facilities for longer periods of time 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.

The Office of the Public Defender (OPD) advises that the bill will result in additional expenditures of \$158,275 to hire two assistant public defenders to handle an increase in felony theft cases. This estimate is based on (1) the assumption that 20% of the 12,028 cases of theft involving property under \$1,000 handled by OPD in calendar 2009 will go to trial as a result of the bill's changes to the felony theft threshold; and (2) caseloads will remain consistent with previous years. Legislative Services disagrees with this estimate, since the current \$1,000 felony theft threshold went into effect on October 1, 2009 and OPD did not reduce staffing levels to accommodate the reduction in felony cases effectuated by the 2009 legislation.

Local Revenues: Local revenues may increase minimally due to the bill's expansion of the scope of felony theft resulting in more felony theft cases being heard in the circuit courts and more monetary penalties being imposed in the circuit courts.

Local Expenditures: 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; Commission on Criminal Sentencing Policy; Office of the Public Defender; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2010
ncs/kdm

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