

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 398
Judiciary

(Delegate Niemann, *et al.*)

Judicial Proceedings

Wiretapping and Electronic Surveillance - Investigation of Felony Theft Scheme

This bill adds a theft scheme or continuing course of conduct involving an aggregate value of property or services of at least \$10,000 to the list of crimes for which evidence may be gathered during a criminal investigation through the interception of oral, wire, or electronic communications. The bill also adds these types of theft offenses to the list of crimes for which a judge may grant an order authorizing the interception of wire, oral, or electronic communications.

Fiscal Summary

State Effect: None. The bill is procedural/technical in nature and does not materially affect State finances.

Local Effect: None. The bill is procedural/technical in nature and does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law:

Wiretapping

Except as otherwise provided in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication;
- willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; and
- willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

However, it is lawful for law enforcement officers and persons acting with the prior direction and under the supervision of law enforcement officials to intercept communications as part of a criminal investigation to provide evidence of the commission of the following crimes:

- murder;
- kidnapping;
- rape;
- sexual offense in the first or second degree;
- child abuse in the first or second degree;
- child pornography;
- gambling;
- robbery;
- arson and related felonies;
- bribery;
- extortion;
- dealing in a controlled dangerous substance;
- fraudulent insurance act;
- manufacture or possession of destructive device;
- human trafficking;
- sexual solicitation or abuse of a minor;
- obstruction of justice; or
- a conspiracy or solicitation to commit any of the above crimes.

Wiretapping is also authorized if a person has created a barricade situation, and there is probable cause to believe a hostage or hostages may be involved.

The exception applies so long as the interceptor is a party to the communication or one of the parties to the communication has given prior consent to the interception.

The Attorney General, State Prosecutor, or any State's Attorney may apply to a judge of competent jurisdiction to grant an order authorizing interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of specified crimes. However, no application or order is required if the interception is lawful under the general wiretap provisions.

Theft Crimes

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 may not knowingly and willfully take a motor vehicle out of the owner's lawful custody, control, or use without the owner's consent. Violators are guilty of felony motor vehicle theft and are subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000. A conviction for motor vehicle theft must merge into a conviction for general theft for the same act or transaction.

When a theft is committed under one scheme or continuing course of conduct, the conduct may be considered as one crime and the aggregate value of the stolen property or services may be considered when determining if the theft is a felony or misdemeanor. This principle applies whether the theft is committed from the same source or several sources.

Background: According to the *2010 Uniform Crime Report*, 118,583 thefts (larceny) and 18,029 motor vehicle thefts were reported in the State during 2010. Information is not available on how many of these thefts were committed under one scheme or continuing course of conduct or the value of the property or services stolen.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, and Queen Anne's counties; Office of the Attorney General; Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); Department of State Police; State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2012
mm/kdm Revised - House Third Reader - March 22, 2012

Analysis by: Amy A. Devadas

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