

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 119
Judiciary

(Delegate McDermott, *et al.*)

Judicial Proceedings

Criminal Procedure - Misdemeanors and Local Ordinance Violations - Citations
and Study

This bill expands the authority of a law enforcement officer to charge a person by citation.

Fiscal Summary

State Effect: Potential minimal impact on District Court and State law enforcement operations. However, to the extent that the issuance of citations in lieu of custodial arrests eventually becomes a more common or standard practice, initial bail review hearings by court commissioners may significantly decrease. Such a potential effect cannot be reliably estimated without any actual experience under the bill.

Local Effect: Potential minimal impact on local law enforcement operations to the extent that local citations are issued; however, local finances should not be directly affected.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, a police officer *must* charge by citation for:

- any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment;
- any misdemeanor or local ordinance violation for which the maximum penalty of imprisonment is 90 days or less, with the exception of six specified crimes; or
- possession of less than 14 grams of marijuana.

A police officer *may* charge by citation for a misdemeanor or local ordinance violation for which the maximum penalty of imprisonment is three years or less, with the exception of 31 specified crimes.

A police officer may charge a defendant by citation only if:

- the officer is satisfied with the defendant's evidence of identity;
- the officer reasonably believes that the defendant will comply with the citation;
- the officer reasonably believes that the failure to arrest the defendant will not pose a threat to public safety;
- the defendant is not subject to arrest for another criminal charge arising out of the same incident; and
- the defendant complies with all lawful orders by the officer.

A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation under these provisions may (1) issue a citation in lieu of making the arrest; or (2) make the arrest and subsequently issue a citation in lieu of continued custody of the accused individual.

The bill also requires the Police Training Commission and the Maryland Statistical Analysis Center (MSAC), in consultation with the Administrative Office of the Courts, to develop a format and procedures for the efficient recording of data required under the bill by December 31, 2012. Each time a law enforcement officer issues a citation, the officer must report the following information on the Maryland Uniform Citation Form in that format:

- the date, location, and time of the issuance of the citation;
- the offense charged;
- the offender's gender;
- the offender's date of birth;
- the state and, if available, the county of residence of the offender; and
- the offender's race or ethnicity.

For each calendar year, the compilation of data required under the bill must be submitted to MSAC by March 1 beginning in 2014. MSAC must analyze the annual reports of citation issuance provided for under the bill and submit a report to the Governor, the General Assembly, and each law enforcement agency before September 1 each year.

A law enforcement agency must adopt a policy against the issuance of a citation on the basis of race that is to be used as a management tool to promote nondiscriminatory law

enforcement and in the training and counseling of its officers. The policy must prohibit the practice of using an individual's race or ethnicity as the sole justification to issue a citation.

The bill's reporting requirements sunset August 31, 2018.

Current Law: In addition to any other law allowing a crime to be charged by citation, including traffic laws, a police officer may issue a citation for:

- sale of an alcoholic beverage to an underage or intoxicated person;
- malicious destruction of property, if the amount of property damage is less than \$500;
- disturbing the peace or disorderly conduct; or
- misdemeanor theft.

The term "citation" means a written charging document that a police officer or fire marshal issues to a defendant, alleging the defendant has committed a crime. It does not include an indictment, information, or statement of charges.

A police officer may issue a citation to a defendant if the officer is satisfied with the defendant's evidence of identity and reasonably believes that the defendant will comply with the citation.

The Chief Judge of the District Court is required to prescribe a uniform, statewide form of a citation. Except for the uniform motor vehicle citation form, the law enforcement agencies of the State, the U.S. Park Police, and the Office of the State Fire Marshal must reimburse the District Court for printing the citation forms that law enforcement officers and the State Fire Marshal require.

Distinctions Between a Felony and Misdemeanor

In Maryland a crime is either a felony or a misdemeanor. Generally, felonies are the more serious of these two types of crimes. There is, however, no clear line for determining whether a crime is a felony or misdemeanor based on the length of incarceration.

Unless specified in a statute or unless an offense was a felony at common law, a crime will be considered a misdemeanor. Most statutes specify whether a crime is a misdemeanor or a felony. Common law crimes retain their common law grades as either felonies or misdemeanors unless changed through the legislative process. The General Assembly may choose to label a statutory crime a felony or misdemeanor independent of the amount of punishment the statute provides. The General Assembly may also choose

to change the status of a crime from a misdemeanor to a felony or a felony to a misdemeanor.

The following are the practical differences between a felony and a misdemeanor. First, unless a statute specifically provides otherwise, all felonies are tried in the circuit courts, where a defendant has a right to a jury trial. Unless a statute specifically allows it, felonies may not be tried in the District Court, which is a court of limited jurisdiction. A misdemeanor may be tried before a judge in the District Court. However, if the maximum length of imprisonment is three years or more or the maximum fine is \$2,500 or more, with the exception of misdemeanor drug possession cases, a misdemeanor may also be tried in the circuit court (where a defendant would have the right to a jury trial). Further, a misdemeanor that, generally speaking, has a maximum term of imprisonment of more than 90 days permits a defendant to request a jury trial, thereby removing the case from the District Court to a circuit court for a jury trial.

Second, there is no statute of limitations for a felony. A person may be charged at any time with a felony, regardless of when the offense occurred. Unless a statute provides otherwise, a misdemeanor must be charged within one year after the offense was committed.

Criminal Justice Information System (CJIS) Central Repository

The CJIS Central Repository at the Department of Public Safety and Correctional Services collects, manages, and disseminates Maryland criminal history record information for criminal justice and noncriminal justice purposes. CJIS is a fingerprint-supported system for positive identification. The following events are included among all required reportable events to the Central Repository:

- the issuance or withdrawal of an arrest warrant;
- an arrest;
- the filing of a charging document; and
- any event arising out of or occurring during the course of a criminal proceeding that the Secretary of Public Safety and Correctional Services by regulation or the Court of Appeals by rule, makes a reportable event.

Background: In September 2010, the Spangenberg Project, under auspices of the Center for Justice, Law and Society at George Mason University, released a report called *An Update on State Efforts in Misdemeanor Reclassification, Penalty Reduction and Alternative Sentencing*. The report was prepared for the American Bar Association. It said, in part, that “the largest cost savings for states occurs when a misdemeanor is reclassified into a nonjailable infraction or citation.” However, the report did not quantify those savings for any state.

The Spangenberg report did cite a few states which have broadened the use of citations or fines-only for misdemeanors (other than traffic offenses):

- New Hampshire – In 1992, New Hampshire created two classes of offenses as misdemeanors. Class “A” for which imprisonment is authorized and Class “B,” for which no imprisonment is authorized. The local prosecutor also has the authority to charge any misdemeanor as a Class “B” misdemeanor, so long as no element of the offense involves an act of violence or threat of violence.
- Virginia – In 2000, Virginia created four classes of misdemeanors, two of which are fine-only offenses: a Class “3” misdemeanor is punishable by a fine of up to \$500 and a Class “4” misdemeanor is punishable by a fine up to \$250.
- Massachusetts – In 2006, Massachusetts enacted legislation allowing district attorneys to treat certain misdemeanors as civil infractions. These include disorderly persons/disturbing the peace, shoplifting, illegal possession of Class “C” marijuana, prostitution, larceny by check, trespass on land, dwelling, etc., as well as operating an uninsured motor vehicle, and operating a vehicle after license/registration has been suspended.

Several other states have established legislative task forces or commissions to consider broadening the scope of civil infractions and/or the use of citations.

In North Carolina, the Sentencing and Policy Advisory Commission issued a report to the state legislature on the reclassifications of misdemeanors as infractions or lesser misdemeanors. The report had been ordered by the 2010 session for submission for the 2011 session. Specifically, the commission recommended that:

- existing Class 3 misdemeanor offenses be reclassified as infractions or as (lesser) Class 2 misdemeanors;
- certain Class 2 misdemeanor offenses in General Statutes Chapter 20 be reclassified as infractions;
- the state legislature expand the range of available sanctions and increase the \$100.00 maximum monetary penalty for infractions;
- the misdemeanor offense class enhancements for second and subsequent violations of the same offense be repealed;
- the state legislature assess the interplay between state and federal law before reclassifying a crime as an infraction, and that it preserve any misdemeanor offense upon which federal funding depends; and
- the state legislature reconsider its expressed intention to eliminate Class 3 misdemeanors.

To date, none of these North Carolina recommendations have been enacted. The 2011 North Carolina Justice Reinvestment Act shifted the incarceration responsibility for some misdemeanors from state prisons to local jails. The Act did not directly address the issues raised by this bill.

State Fiscal Effect: Maryland's Uniform Crime Report for 2010 shows a statewide total of 230,834 adult arrests by all State and local law enforcement agencies, which is a 5% reduction from the total of 244,041 in 2009. Juvenile arrests were an additional 39,964 for 2010. However, this includes felonies and misdemeanors. Outside of the seven Part 1 serious crimes (as defined by the FBI), the uniform crime report data do not sort misdemeanor or felony offenses.

The inherent difficulty in assessing fiscal and/or operational impact under this bill stems from the fact that citations may be issued at the discretion of a police officer in the State as long as the misdemeanor is not among the 24 crimes of violence in Maryland. Legislative Services (DLS) advises that the extent to which citations are used under the bill may largely depend on policy decisions by law enforcement agencies around the State, varying by jurisdiction. The DLS survey of the District Court, State agencies, and local governments yielded the following results:

District Court

While this bill will likely result in an increase in the District Court's caseload, resulting in additional clerical and court time necessary for the adjudication of these citation summonses/cases, it may also result in a decrease in the number of defendants brought before a District Court commissioner for bail review. There were 72,834 total initial appearances as a result of warrant and bench warrant arrests for misdemeanors and felony charges together in fiscal 2011. However, the District Court was unable to sort for misdemeanor cases only. In any event, the District Court does not anticipate increased case numbers under the bill that would have a significant fiscal or operational impact on the District Court.

Governor's Office of Crime Control and Prevention (GOCCP)

MSAC is in GOCCP which, among other responsibilities, does analysis of the traffic stop data. Currently, upon issuing a criminal and/or civil citation, law enforcement agencies forward a paper copy of their physical citations to the Maryland Judiciary. The courts process those citations and upload citation information into the Maryland Judiciary's Judicial Information Systems database. GOCCP reports that the bills requirement for analysis of citation data can be handled with existing budgeted resources.

Office of the Public Defender

The Office of the Public Defender (OPD) does not anticipate that the bill will have a fiscal impact on that agency. However, OPD advises that it may pose minimal operational impact as fewer defendants may access OPD services through central booking. OPD did not quantify such an operational effect.

Department of State Police

The Department of State Police advises that the discretionary use of citations for most misdemeanors may, over time, provide a cost savings from greater operational efficiencies. However, such an impact cannot be measured.

Department of Natural Resources

Most crimes now witnessed or encountered by Natural Resources Police are already citable offenses. The bill's impact is assumed to be minimal.

Department of General Services (DGS)

The bill will not have a fiscal or operational impact on police operations of the department. Any enforcement or training issues resulting from the bill will be handled via changes to the DGS standard operating procedures manual and at mandated annual in-service training.

DLS assumes that any reimbursable costs to the District Court for producing new citation forms for law enforcement officers can be handled with existing budgeted resources of the District Court and any affected law enforcement agency in the State.

Local Fiscal Effect: The Maryland State's Attorneys Association advises that the bill has no fiscal or operational impact on State's Attorney offices in any jurisdiction. All county and municipal jurisdictions reported that while the bill may provide some operational efficiencies, it is not expected to have a significant operational or fiscal impact. Because local law enforcement agencies already report data covered under the bill to the Maryland Judiciary, no additional reporting efforts by law enforcement agencies will be required as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): National Conference of State Legislatures; North Carolina General Assembly, Division of Fiscal Research; Kent, Washington, and Worcester counties; Department of Natural Resources; Department of General Services; Judiciary (Maryland District Court); Department of State Police; Maryland Sheriff's Association; Department of Legislative Services

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