

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 742
Judiciary

(Delegate Waldstreicher, *et al.*)

Judicial Proceedings

Criminal Procedure - Citation Authority

This emergency bill authorizes a police officer to charge by citation for sale of an alcoholic beverage to an underage drinker or intoxicated person, malicious destruction of property with damage valued at less than \$500, or misdemeanor theft. Any issuance of citations under the bill must meet existing statutory requirements for charging a defendant by citation.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances. It is anticipated that any decrease in operational expenditures or operational efficiencies experienced by the District Court, Department of State Police (DSP), or the Department of Public Safety and Correctional Services (DPSCS) as a result of the bill are shifted to other functions.

Local Effect: The bill is not expected to materially affect local finances. It is anticipated that any decrease in operational expenditures or operational efficiencies experienced by local law enforcement and local detention departments from fewer arrests and pretrial detentions are shifted to other functions.

Small Business Effect: None.

Analysis

Current Law: Pursuant to Chapters 504 and 505 of 2012 (SB 422 and HB 261), as of January 1, 2013, in addition to any other law allowing a crime to be charged by citation, a police officer must issue a citation for (1) possession of marijuana and (2) any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment

or carries a maximum penalty of imprisonment for 90 days or less, with specified exceptions.

The officer may issue the citation only if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) 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 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.

Theft: 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 is subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500.

Chapter 655 of 2009 (HB 66) 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

Pursuant to Chapters 29 and 30 of 2012 (SB 131/HB 115), a police officer's authority to make warrantless arrests was expanded to theft crimes with a property value of less than \$1,000.

Malicious Destruction of Property: A person may not willfully and maliciously destroy, injure, or deface the real or personal property of another. A violator causing damage of less than \$500 to the property is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 60 days and/or a fine of \$500. A violator causing damage of at least \$500 to the property is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$2,500.

In addition to the penalties cited above, the court must order a person convicted of causing malicious destruction by an act of graffiti to pay restitution and/or perform community service.

The value of damage is based on the evidence and that value must be applied for the purpose of imposing penalties. If it cannot be determined from the evidence whether the value of the damage to the property is more or less than \$500, the value is deemed to be less than \$500. To determine a penalty, the court may consider the aggregate value of damage to each property resulting from one scheme or continuing course of conduct as one crime. If separate acts resulting in damage to the properties of one or more owners are set forth by separate counts in one or more charging documents, the separate counts may not be merged for sentencing.

Sale of Alcoholic Beverages to an Underage Drinker or Intoxicated Person: An alcoholic beverages licensee or an employee of the licensee (licensee/employee) is prohibited from furnishing alcoholic beverages (1) to a person younger than age 21 or (2) to any person who is visibly under the influence of any alcoholic beverage. A person charged with this offense must receive a summons to appear in court to answer the charges and may not be required to post a bail bond pending trial. Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a maximum fine of \$1,000. Additional jurisdiction-specific penalties may apply.

A licensee/employee of the licensee who is charged with this offense may not be found guilty if the licensee/employee used due caution to establish that the underage recipient was not younger than age 21, if the underage recipient is a nonresident of the State.

Background: Prior to the enactment of Chapters 504 and 505 of 2012, all of the offenses listed in this bill could have been charged through the issuance of a citation. **Exhibit 1** lists the number of District Court cases for violations of the offenses listed in this bill during fiscal 2012.

Exhibit 1
Fiscal 2012 District Court Cases

<u>Offense</u>	<u>Fiscal 2012 District Court Violations</u>
Misdemeanor theft (under \$1,000)	23,170
Sale of alcohol to an intoxicated person	2,010
Sale of alcohol to an underage drinker	Data not available
Malicious destruction of property (less than \$500)	2,353

Source: District Court of Maryland

State Expenditures: General fund expenditures may decrease minimally for the Judiciary, DSP, and DPSCS to the extent that the bill reduces the number of District Court commissioner initial appearances by arrestees, the number of arrests, and the number of pretrial detentions in Baltimore City. This decrease may be offset in part by similar costs incurred should the cited defendants fail to appear in court. However, any savings experienced by the Judiciary, DSP, and DPSCS are likely to be shifted to other functions within those agencies.

Although at least 27,533 violations of the offenses listed in this bill were brought before the District Court during fiscal 2012, data is not available on the number of individuals represented by these cases who were charged with additional offenses that are not eligible for citations or were otherwise ineligible to receive a citation.

Local Expenditures: Carroll, Cecil, Harford, and Montgomery counties advise that the bill does not have a fiscal impact on their jurisdictions. Baltimore County advises that though it does not have data on the number of citations that would be issued in lieu of arrests as a result of the bill, the bill does have the potential to reduce detention costs at the county's detention center.

Additional Information

Prior Introductions: None.

Cross File: SB 991 (Senator Raskin) – Judicial Proceedings.

Information Source(s): Baltimore, Carroll, Cecil, Harford, and Montgomery counties; Town of Bel Air; Department of General Services; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation, Department of Legislative Services

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ncs/kdm

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