

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 842

(Senator Carter)

Judicial Proceedings

Ways and Means and Judiciary

Criminal Law - Gaming - Civil Offense

This bill decriminalizes and/or alters the penalties for various betting/gambling-related offenses under §§ 12-102 and 12-103 of the Criminal Law Article.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from fines imposed in the District Court. Minimal decrease in general fund expenditures due to the bill's decriminalization of specified offenses.

Local Effect: Minimal decrease in local revenues from fines imposed in circuit court cases. Minimal decrease in local incarceration expenditures due to the bill's decriminalization of specified offenses.

Small Business Effect: None.

Analysis

Bill Summary: The bill alters the classifications of and/or penalties for several offenses, as shown in **Exhibit 1**.

Exhibit 1
Classifications and Penalties under Current Law and under the Bill

Offense	Current Penalty	Penalty under the Bill
Betting, wagering, and gambling (Moved from § 12-102 to § 12-103 of the Criminal Law Article)	Misdemeanor Imprisonment for at least 6 months and up to 1 year and/or a fine of at least \$200 and up to \$1,000	Civil offense Maximum fine of \$500 if the violation involves money/consideration of up to \$100 Maximum fine of \$1,000 if the violation involves money/consideration exceeding \$100
Remaining offenses under § 12-102 of the Criminal Law Article involving running illegal gambling operations	Misdemeanor Imprisonment for at least 6 months and up to 1 year and/or a fine of at least \$200 and up to \$1,000	Misdemeanor Imprisonment for up to 6 months and/or a fine of up to \$5,000
Playing specified games and any other gaming device or fraudulent trick (The bill removes references to specified games) (§ 12-103 of the Criminal Law Article)	Misdemeanor Imprisonment for at least 6 months and up to 2 years and/or a fine of up to \$100	Civil offense Maximum fine of \$500 if the violation involves money/consideration of up to \$100 Maximum fine of \$1,000 if the violation involves money/consideration exceeding \$100

Source: Department of Legislative Services

Adjudication of the civil offenses established under the bill is not a criminal conviction for any purpose and does not impose any of the civil disabilities that may result from a criminal conviction. The bill (1) clarifies provisions regarding the issuance of citations for these civil offenses; (2) requires a uniform citation for this offense, to be prescribed by the District Court; and (3) requires the Chief Judge of the District Court to establish a schedule for the prepayment of a fine imposed for a violation.

A person issued a citation for these civil offenses must pay the full amount of the preset fine or request a trial date, to be determined by the District Court by writ or trial notice. Prepayment of a fine must be considered a plea of guilty to a code violation. A person may request a trial by sending a request for trial to the District Court in the jurisdiction where the citation was issued within 30 days of the issuance of the citation. If a person does not request a trial or prepay the fine within 30 days of the issuance of the citation, the District Court must impose the maximum fine and costs against the person and find the person guilty of a code violation. The defendant is liable for the costs of the proceeding in the District Court, which are \$5.

In any proceeding for a code violation, the State has the burden to prove the defendant's guilt by a preponderance of the evidence, and the District Court must apply the same evidentiary standards prescribed by law or rule for a criminal case.

The defendant is entitled to (1) cross-examine all witnesses who appears against the defendant; (2) produce evidence or witnesses on the defendant's own behalf; (3) testify on the defendant's own behalf; and (4) be represented by counsel of the defendant's own choice and at the defendant's own expense. The defendant may enter a plea of guilty or not guilty, and the verdict must be guilty of a code violation, not guilty of a code violation, or probation before judgment.

The State's Attorney for any county may (1) prosecute a violation in the same manner as a prosecution of a criminal case; (2) enter a *nolle prosequi* or move to place the case on a stet docket, and (3) exercise authority in the same manner prescribed by law for a violation of the criminal laws of the State.

A person issued a citation for a violation who is younger than age 18 must be subject to the procedures and dispositions under Title 3, Subtitle 8A of the Courts and Judicial Proceedings Article (juvenile causes).

Current Law: A person may not:

- bet, wager, or gamble;
- make or sell a book or pool on the result of a race, contest, or contingency;

- establish, keep, rent, use, or occupy or knowingly allow to be established, kept, rented, used, or occupied, a building, vessel, or place for the purpose of betting, wagering, or gambling or making, selling, or buying books or pools on the result of a race, contest, or contingency; or
- receive, become the depository of, record, register, or forward, or propose, agree, or pretend to forward, money or any other thing or consideration of value to be bet, wagered, or gambled on the result of a race, contest, or contingency.

A person who violates betting, wagering, and gambling laws is guilty of a misdemeanor and on conviction is subject to imprisonment for six months to one year and/or a fine ranging from \$200 to \$1,000.

A person who commits a violation in Baltimore City may be charged by a citation, which may be issued to a person by a police officer authorized to make arrests in Baltimore City if there is probable cause to believe that the person is committing or has committed a violation. The citation must contain specified information, and the police officer who issued the citation must forward a copy of the citation to the appropriate court. The court must promptly schedule the case for trial and schedule the defendant to appear. Willful failure of the defendant to respond to the summons is contempt of court.

A person may not play the following games for money or any other thing or consideration of value: thimbles; little joker; dice or craps; or any other gaming device or fraudulent trick. Violators are guilty of a misdemeanor, punishable by imprisonment between six months and two years and/or a fine of up to \$100.

Background: **Exhibit 2** contains information on the number of violations filed in the District Court and the circuit courts for the offenses affected by the bill during fiscal 2018. A violation is a charge/count filed with the court. It is not a conviction, and one defendant may be associated with multiple violations.

Exhibit 2
Violations Filed in the District Court and the Circuit Courts
Fiscal 2018

Charge	District Court Violations	Circuit Court Violations
Criminal Law Article § 12-102(a)(1) and (a)(2)	15	0
Criminal Law Article § 12-102(a)(3) and (a)(4)	6	3
Criminal Law Article § 12-103	84	29

Source: Maryland Judiciary

State Revenues: General fund revenues increase minimally from fines imposed in the District Court. The bill's decriminalization provisions and resulting changes in court-related costs paid to the State are not anticipated to materially affect State revenues.

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services decrease minimally as a result of the bill's repeal of specified incarceration penalties.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,800 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 a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues decrease minimally from fines imposed in the circuit courts. Based on the distribution of violations for offenses affected by the bill, it appears that significantly more individuals are charged with violations of § 12-103 of the Criminal Law Article (113 violations in fiscal 2018) than are charged with violations of § 12-102 (24 violations in fiscal 2018). The bill's decriminalization of the offenses under § 12-103 shifts some of these cases (and their fine revenues) from the circuit courts to the District Court. However, the bill also significantly increases the maximum monetary penalty for a misdemeanor violation of specified offenses under § 12-102 of the Criminal Law Article, some of which may result in circuit court cases. This estimate assumes that the net effect of these two elements of the bill is a minimal decrease in local revenues from fines imposed in the circuit courts.

Local Expenditures: Expenditures decrease minimally as a result of the bill's elimination of existing incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: HB 377 of 2017, a similar bill, received a hearing in the House Ways and Means Committee. No further action was taken on the bill. Its cross file, SB 940, received a hearing in the Senate Budget and Taxation Committee. No further action was taken on the bill. HB 242 of 2016, a similar bill, passed the House as amended and received a hearing in the Senate Budget and Taxation Committee. No further action was taken on the bill.

Cross File: HB 113 (Delegate Moon, *et al.*) - Ways and Means and Judiciary.

Information Source(s): Charles County; City of Havre de Grace; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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