

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1036 (Delegate J. Lewis, *et al.*)
Ways and Means and Judiciary

Criminal Law - Crimes Related to Licensed Gaming - Penalties

This bill creates Title 12, Subtitle 4 (Crimes Related to Licensed Gaming) of the Criminal Law Article, which establishes prohibitions and criminal penalties for cheating-related activities in facilities licensed or regulated under Title 9, Subtitle 1A of the State Government Article (Video Lottery Terminals). The bill applies prospectively, and its provisions are severable. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes several prohibitions pertaining to licensed gaming, including:

- cheating;
- altering or misrepresenting the outcome of a game;
- manipulating the outcome of a game;
- claiming, collecting or taking money or anything of value in or from a game with the intent to defraud;

- using inside knowledge of the outcome of a game to alter betting to affect the outcome of a game;
- possessing or using devices, software, or hardware (or a combination of these items) designed to obtain an advantage at playing a game;
- using, possessing, selling, or manufacturing counterfeit chips or counterfeit instruments in a game;
- possessing a device intended to be used to violate the provisions of the bill;
- possessing specified types of keys or devices;
- possessing equipment, products, and materials intended for use or designed for use in the manufacturing of or activities connected to the manufacturing or distribution of counterfeit chips, tokens, debit instruments, or other wagering instruments; and
- manufacturing, selling, or distributing a card, chip, die, game, or device that is intended to be used to violate a provision of the bill.

Exhibit 1 contains information on the bill's penalty provisions. The penalties are based on the value to a licensee of the lost property or services connected to the violation. If it cannot be determined that the value of the property or services taken is more or less than \$1,500, the value is deemed to be less than \$1,500. If it cannot be determined that the value of the property or services taken is more or less than \$100, the value is deemed to be less than \$100. A gaming instrument approved for gaming by the State Lottery and Gaming Control Commission (SLGCC) has the equivalent monetary value stated on the instrument or assigned by game play.

When a violation of Title 12, Subtitle 4 of the Criminal Law Article is committed under one scheme or course of conduct, whether from the same or several sources, the conduct may be considered as one crime, and the value of the property or services may be aggregated for the purposes of determining whether the violation is a felony or a misdemeanor.

Exhibit 1
Criminal Penalties under the Bill

<u>Value of Property or Services</u>	<u>Penalty</u> <u>(maximum imprisonment/fine)*</u>
Less than \$100	Misdemeanor – 90 days and/or \$500
At least \$100 but less than \$1,500	Misdemeanor First Conviction – 6 months and/or \$500 Second or Subsequent Conviction – 1 year and/or \$500
At least \$1,500 but less than \$25,000	Felony – 5 years and/or \$10,000
At least \$25,000 but less than \$100,000	Felony – 10 years and/or \$15,000
\$100,000 or more	Felony – 20 years and/or \$25,000
Four or More Prior Convictions under Title 12, Subtitle 4 – Value less than \$1,500	Misdemeanor – 5 years and/or \$5,000**

*In addition to penalties listed above, the defendant must restore the property taken to the licensee or pay the licensee the value of the property or services.

**Subject to specified notice requirements.

Source: Department of Legislative Services

Current Law:

General Theft

Under the general theft statute, a person may not, under specified circumstances, (1) willfully or knowingly obtain or exert unauthorized control over property; (2) obtain control over property by willfully or knowingly using deception; (3) possess stolen property knowing that it has been stolen or believing that it probably has been stolen; (4) obtain control over property knowing that the property was lost, mislaid, or delivered under a mistake as to the identity of the recipient or nature or amount of the property; or (5) obtain the services of another that are available only by compensation by deception or with knowledge that the services are provided without the provider's consent. A violator is required to restore the owner's property or pay the owner the value of the property or services and is subject to the penalties listed below in **Exhibit 2**.

Exhibit 2
Penalties under the General Theft Statute

<u>Value of Property and/or Services</u>	<u>Maximum Penalty*</u>
Less than \$100**	Misdemeanor – 90 days imprisonment and/or \$500 fine
At least \$100 but less than \$1,500**	Misdemeanor – six months imprisonment and/or \$500 fine (first conviction) or 1 year imprisonment and/or \$500 (second or subsequent conviction)
Less than \$1,500 (four or more prior theft convictions)***	Misdemeanor – 5 years imprisonment and/or \$5,000 fine
At least \$1,500 but less than \$25,000	Felony – 5 years imprisonment and/or \$10,000 fine
At least \$25,000 but less than \$100,000	Felony – 10 years imprisonment and/or \$15,000 fine
\$100,000 or more	Felony – 20 years imprisonment and/or \$25,000 fine

*In addition to the penalties listed above, the defendant must restore the property taken to the owner or pay the owner the value of the property or services.

**Subject to two-year statute of limitations.

***Subject to specified notice requirements.

Source: Department of Legislative Services

Section 7-110 of the Criminal Law Article specifies presumptions and permitted and prohibited defenses to the crime of theft.

Mandatory Exclusion Lists

By regulation, SLGCC must provide a list of individuals who are to be mandatorily excluded or ejected by a video lottery operation licensee from any video lottery operation licensed by the State. Regulations must define the standards for excluding or ejecting specified individuals. SLGCC may impose sanctions on a licensee if the licensee knowingly fails to exclude or eject an individual on the list from the premises of the licensee.

Regulations authorize the Director of the State Licensing and Gaming Control Agency (SLGCA) to place on the mandatory exclusion list an individual who:

- is a career offender;
- has been convicted of a criminal offense involving moral turpitude or a gambling offense;
- would adversely affect the interests of the State, the licensee, or the individual if the individual is at a facility;
- is the subject of any administrative or judicial order directing the individual to stay away from a video lottery or other gaming facility;
- presents a threat to the safety of others on the premises of a video lottery facility;
- engages in, or has a documented history of engaging in, disruption of video lottery or table game play;
- the director or a facility operator reasonably believes has cheated or attempted to cheat by engaging in specified conduct; or
- engages in any conduct that may adversely affect public confidence in, or perception of, video lottery or table game operations in the State.

Background: According to SLGCA, there are 44 individuals on the mandatory exclusion list. Four individuals on the mandatory exclusion list have been discovered on the premises of a video lottery facility. If an individual on the mandatory exclusion list tries to enter a facility, the facility staff usually denies the individual entry at the door. If, however, the individual is discovered on the gaming floor, facility staff detains the individual, positively identifies that the individual is on the list, and notifies SLGCC of the violation. The individual is given a copy of the mandatory exclusion letter that was mailed to him or her and is escorted out of the facility. Video lottery licensees do not usually call local law enforcement.

SLGCA has historically advised that, while local law enforcement is usually not called for individuals on the mandatory exclusion list who are on the video lottery property, local law enforcement is contacted and a trespassing citation is issued to individuals on the voluntary exclusion list who are discovered at video lottery facilities. In 2018, there were 244 violations involving individuals on the voluntary exclusion list being discovered at casinos.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities

and increased payments to counties for reimbursement of inmate costs. The number of people convicted of the proposed crimes is expected to be minimal.

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 increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's 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 1806 of 2018, a substantially similar bill, received a hearing in the House Ways and Means Committee. No further action was taken on the bill. Its cross file, SB 1254, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: SB 1024 (Senators Smith and Patterson) - Rules.

Information Source(s): Baltimore, Carroll, Harford, and Queen Anne's counties; Maryland Association of Counties; Comptroller's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety

and Correctional Services; Maryland State Lottery and Gaming Control Agency;
Department of Legislative Services

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Analysis by: Amy A. Devadas

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