

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 674

(Senator Edwards)

Judicial Proceedings

Gun Theft Felony Act of 2020

This bill (1) excludes theft of a firearm from the general theft statute; (2) classifies theft of a firearm as a separate felony offense; and (3) establishes penalties for theft of a firearm.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues due to cases shifting from the District Court to the circuit courts, as discussed below. Minimal increase in general fund expenditures due to the bill's incarceration penalties.

Local Effect: Minimal increase in local revenues due to the bill's monetary penalties. Minimal decrease in local incarceration expenditures due to the bill's incarceration penalties.

Small Business Effect: None.

Analysis

Bill Summary: A person convicted of theft of a firearm, including an antique firearm or a replica of an antique firearm, is guilty of a felony and subject to the following penalties:

- first conviction: imprisonment for up to 5 years with a nonsuspendable mandatory minimum sentence of 2 years and/or a \$1,000 maximum fine; and
- second or subsequent conviction: imprisonment for up to 10 years with a nonsuspendable mandatory minimum sentence of 5 years and/or a \$2,500 maximum fine.

Section 14-102 of the Criminal Law Article does not apply to the mandatory minimum sentences listed above and a court may not impose less than the mandatory minimum sentences listed above. A sentence imposed for theft of a firearm under the bill must be separate from and consecutive to a sentence imposed for any other offense.

Current Law: Theft of a firearm is subject to the general theft statute, which imposes penalties based on the value of the stolen property or services.

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:

<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 – 6 months imprisonment and/or \$500 fine (first conviction) or 1 year imprisonment and/or \$500 fine (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

*Subject to two-year statute of limitations
 **Subject to specified notice requirements

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

The District Court has concurrent jurisdiction with the circuit courts over felony theft violations.

Under § 14-102 of the Criminal Law Article, if a law sets a maximum and a minimum penalty for a crime, in lieu of the minimum penalty, the court may impose a lesser penalty of the same character. This authority does not affect a maximum penalty fixed by law or the punishment for any crime for which the statute provides one and only one penalty.

State Fiscal Effect: General fund revenues may decrease minimally from fines imposed in District Court cases that shift to the circuit courts under the bill. General fund expenditures increase minimally as a result of the bill's incarceration penalties due to people being committed to State correctional facilities for longer periods of time and inmates shifting from local facilities to State facilities as a result of the bill's mandatory minimum sentences. This estimate assumes that the majority of stolen firearms have a value of less than \$1,500.

The Judiciary advises that it does not have information on how many convictions for theft offenses involved the theft of a firearm. However, the number of people convicted of this proposed crime is expected to be minimal.

Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

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 \$3,700 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: Local revenues increase minimally due to the bill's monetary penalties.

Local Expenditures: Local expenditures decrease minimally due to the bill's incarceration penalty provisions from inmates shifting from local detention facilities to State correctional facilities.

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 722 of 2019 received an unfavorable report from the House Judiciary Committee. HB 1184 of 2018, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: HB 914 (Delegate Beitzel, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Garrett, Howard, and Montgomery counties; 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; Department of State Police; Department of Legislative Services

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