

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1049
Judiciary

(Delegate Shoemaker, *et al.*)

Criminal Law - Package Theft (Defense Against Porch Pirates Act)

This bill prohibits a person from knowingly or willfully obtaining or exerting unauthorized control over a package delivered to another with the intent to deprive the owner of the package. Violators are guilty of a felony, punishable by imprisonment for up to five years and/or a maximum fine of \$5,000.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues from fines imposed in the District Court. Potential minimal increase in general fund expenditures due to the bill's incarceration penalty.

Local Effect: Potential minimal increase in local revenues from fines imposed in the circuit courts. Potential minimal increase in local expenditures due to the bill's incarceration penalty.

Small Business Effect: None.

Analysis

Current Law:

General Theft Statute

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 (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 of the Criminal Law Article specifies presumptions and permitted and prohibited defenses to the crime of theft.

Federal Mail Theft

Under federal law (18 U.S.C. § 1708), mail theft is a felony, punishable by imprisonment for up to five years and/or a \$250,000 maximum fine. The law applies to letters, packages, and other types of material.

Background: Exhibit 1 includes data on the number of general theft violations and convictions in the trial courts during fiscal 2019.

Exhibit 1
General Theft – Violations and Convictions in the
District Court and the Circuit Courts
Fiscal 2019

| <u>Charge</u> | <u>District Court Violations</u> | <u>District Court Convictions</u> | <u>Circuit Court Violations</u> | <u>Circuit Court Convictions</u> |
|---|--|---|---|--|
| Theft Less than \$100 | 12,242 | 1,444 | 2,154 | 149 |
| Theft \$100 to \$1,500 | 17,598 | 1,707 | 5,084 | 592 |
| Theft \$1,500 to \$25,000 | 5,857 | 201 | 2,501 | 225 |
| Theft \$25,000 to \$100,000 | 501 | 13 | 109 | 16 |
| Theft \$100,000+ | 65 | 2 | 47 | 7 |
| Theft Scheme – \$100 to \$1,500 | 921 | 81 | 218 | 33 |
| Theft Scheme – \$1,500 to \$25,000 | 870 | 60 | 399 | 83 |
| Theft Scheme – \$25,000 to \$100,000 | 64 | 4 | 115 | 15 |
| Theft Scheme – \$100,000+ | 25 | 0 | 47 | 12 |

Source: Maryland Judiciary

State/Local Fiscal Effect: Should individuals be charged, convicted, and sentenced for the offense established under the bill instead of traditional theft offenses, then the bill may result in (1) a shifting of cases and fine revenues from the District Court to the circuit courts; (2) an increase in general fund expenditures for the Department of Public Safety and Correctional Services if more people are sentenced to State correctional facilities as a result of the bill; and (3) an increase in local expenditures if individuals spend longer amounts of time in local detention facilities as a result of the bill.

However, the Department of Legislative Services advises that individuals charged with the offenses established under the bill are likely to face traditional theft charges as well and will likely be sentenced for those offenses instead of the offense established under the bill. This estimate assumes that most of the cases affected by the bill involve property valued at less than \$1,500.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Baltimore City; 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 Legislative Services

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mr/aad

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