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BILL: SB 874 Criminal Law - Gift Card Crimes
FROM: Maryland Office of the Public Defender
POSITION: Unfavorable
DATE: February 26, 2025

The Maryland Office of the Public Defender respectfully requests that the Judicial Proceedings Committee issue an unfavorable report on Senate Bill 874. Our opposition is generally rooted in the following reasons:

1. Current Maryland law already criminalizes theft in various capacities. Indeed, Section 7-104 of the Criminal Law Section of the Maryland Code provides graduated penalties for thefts based upon the value of the goods or services stolen. The below chart illustrates how the application of Section 7-104 works in a typical theft case; and
2. Enhanced and new criminal penalties typically do not work to deter criminal behavior and instead ends up harming an individual’s ability to access educational, employment, and housing opportunities in the future.

First, the current theft penalties are numerous with graduated penalties:

Graduated Penalties Under MD Code, Criminal Law, § 7-104 (General Theft Provisions)			
Subsection	Value Lost	Misdemeanor/Felony	Statutory Max. Penalty
(g)(1)(i)	More than \$1,500 but less than or equal to \$25,000	Felony	5 years imprisonment and/or a fine not more than \$10,000 (plus restitution)
(g)(1)(ii)	More than \$25,000 but less than \$100,000	Felony	10 years imprisonment and/or a fine not more than \$15,000 (plus restitution)
(g)(1)(iii)	More than or equal to \$100,000	Felony	20 years imprisonment and/or a fine of not more than \$25,000 (plus restitution)
(g)(2)(i)(1)	at least \$100 but less than \$1,500	Misdemeanor	upon first conviction, 6 months imprisonment and/or a fine of not more than \$500 (plus restitution)
(g)(2)(i)(2)	at least \$100 but less than \$1,500	Misdemeanor	upon second conviction, 1 year imprisonment and/or a fine of up to \$500 (plus restitution)
(g)(3)(i)	less than \$100	Misdemeanor	imprisonment up to 90 days and/or a fine of \$500 (plus restitution)

Senate Bill 874 seeks to prohibit the use, sale, transfer or possession of stolen gift cards, in addition to adding new offenses for making or signing stolen or fraudulent gift cards.

However, to put the unnecessary duplicativeness of such a policy into perspective, it bears noting that OPD currently defends thousands of theft cases every year. The charts below illustrate the number of cases OPD defended for the indicated fiscal and calendar years:

THEFT \$100-1,500 Annual Breakdown

FY Year

Fiscal Year

FY - # Matters with Charge - Theft \$100 - \$1,500				
Charge Description	sectionCode	section Name	sectionNumber	# Cases Per Client Adjusted*
THEFT \$100 TO UNDER \$1,500	CR 7-104	1 1137	3569	46,702
THEFT \$100 TO UNDER \$1,500	CR 7-104	1F1137	3572	300
Total				46,957

FY - # Matters with Charge - Theft \$100 - \$1,500							
sectionNumber	FY20	FY21	FY22	FY23	FY24	FY25	Total
3569	533	9,573	8,898	9,450	11,508	6,740	46,702
3572	11	83	40	53	76	37	300
Total	544	9,646	8,929	9,494	11,571	6,773	46,957

Calendar Year

CY - # Matters with Charge - Theft \$100 - \$1,500				
Charge Description	sectionCode	section Name	sectionNumber	# Cases Per Client Adjusted*
THEFT \$100 TO UNDER \$1,500	CR 7-104	1 1137	3569	46,602
THEFT \$100 TO UNDER \$1,500	CR 7-104	1F1137	3572	299
Total				46,856

CY - # Matters with Charge - Theft \$100 - \$1,500							
sectionNumber	2020	2021	2022	2023	2024	2025	Total
3569	5,481	8,992	9,065	10,177	12,581	306	46,602
3572	65	44	47	65	75	3	299
Total	5,541	9,026	9,105	10,231	12,644	309	46,856

*Adjusted to remove ineligible matters and matters where client retained private counsel

As illustrated in the charts above, OPD defends an average of 10,251.5 theft-over \$100, but less than \$1,500, charges per calendar year. Maryland State prosecutors are already charging thousands of people with theft annually. It should be noted that a gift card also appears to already fall within the definition of property under the current definition of a credit card under Criminal Law Sec. 8-201(c)(2). Adding new theft and property crimes to the Code will not solve the problem. Leading to the second fact that necessitates our opposition.

Additional criminal penalties generally do not serve as a deterrent to crime and does not work to make Maryland any safer. Certainty and swiftness of a conviction are the primary ways that the criminalization of behavior works to deter that behavior. Research shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment. Thus, enforcement of existing statutes with celerity and certainty should be the focus, not further legislation.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 874.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.