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Position on Proposed Legislation

BILL: SB 410 Criminal Law - Mail and Package Theft

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 5, 2025

The Maryland Office of the Public Defender respectfully requests that the Judiciary Committee issue unfavorable reports on Senate Bill 410. Our opposition is rooted in three facts:

- 1) Current Maryland law already criminalizes theft.¹ 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;
- 2) A felony conviction does 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; and
- 3) The bill as written is overbroad and if it is meant to address solely the issue of arrow key reproduction it should be written as such.

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	Felony	5 years imprisonment and/or a fine not

¹ Federal law criminalizes mail theft in 18 U.S.C. § 1708, which carries a fine and imprisonment of “not more than five years, or both.” *Id.*

	\$25,000		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 410 seeks to make possession of 1-16 mail items procured by “theft” under CL 7-104 a misdemeanor subject to 6 months imprisonment, and to make 16 or more mail items procured by “theft” under CL 7-104 a **felony** subject to 2 years imprisonment. A person who possesses an arrow key due to “theft” under CL 7-104 or uses an arrow key to commit theft would be subject to a **felony** subject to 5 years imprisonment or 3 years imprisonment respectively. To put the unnecessary duplicativeness of such a policy into perspective, it bears noting that OPD currently defends thousands of theft-**over** \$100 but less than \$1,500 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

Multiple selections

Year

Multiple selections

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.² Maryland State prosecutors are already charging thousands of people with theft annually. Adding new theft crimes to the Code, will not solve the problem. Leading to the second fact that necessitates our opposition.

A felony conviction is not a deterrent and does not work to make Maryland, or our mail, 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.³ Thus, enforcement of existing statutes with celerity and certainty should be the focus, not further legislation.

Additionally, felonies are the highest level of crime. As such, people with felony convictions face increased challenges in gaining employment. Eighty-seven percent of employers conduct background checks. Most employers do not hire people with felony convictions and/or who have

² Please note the data for 2020 is not complete. OPD rolled out its eDefender case management system in May of that year and, unfortunately, the charge data did not migrate to our new system from Prolaw. The remainder of the data is valid through 1/10/25. We derived the average annual number from adding CY 2021 - 2024 data and dividing by 4 (i.e. $9,026 + 9,105 + 10,231 + 12,644 = 41,006 / 4 = 10,251.5$).

³ <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>.

served time in prison. Sixty percent of incarcerated people remain unemployed one year after their release. This inability to gain employment desperately impacts a person's quality of life and ability to establish a livelihood without committing crime.

Similarly, without employment, a person re-entering society cannot provide him or herself housing if they have no income to pay for it. At the same time, people with felony convictions are unable to access public housing and housing voucher programs. Most, if not all, government housing disqualifies applicants with felony convictions. Furthermore, families that live in public housing or have housing through a government voucher, are often not allowed to have family members with felony convictions live with them. Additionally, most landlords often do background checks and do not rent to people with criminal backgrounds and specifically felony charges. This means that a person with a felony conviction not only faces significant barriers accessing housing but is most likely unable to access affordable housing because of their conviction. They could also be prohibited from reunifying with their families if their family lives in any form of public housing.

Additionally, people with felony convictions are excluded from participating in food supplement programs in Maryland. With the prices of food on the rise, limited income and no access to food supplement programs, the options for a convicted felon to survive and meet their basic needs without reoffending are little to none.

Finally, this bill seeks to cover a swath of mail-related behavior resulting in the aforementioned issue of duplicativeness. If the bill is meant to address theft and misuse of an arrow key alone, it should be drafted as such. **Notably, there are many bills that appear to attempt to address various versions on this issue this year:**

HB 64 Theft of Mail Packages and Victim Notification

HB 79 Criminal Law – Mailing of Fake, Fraudulent, or Altered Documents – Prohibition

HB 126 Criminal Law – Theft – Mail and Packages (Porch Piracy Act of 2025)

HB 135 Criminal Law – Theft – Mail and Packages (Porch Piracy Act of 2025)

HB 143 Criminal Law – Theft – Mail and Packages (Porch Piracy Act of 2025)

HB 177 Criminal Law – Theft and Opening of Mail Packages

HB 210 Criminal Law – Theft – Mail and Packages (Porch Piracy Act of 2025)

HB 269 Criminal Law – Petty Theft – Statute of Limitations

HB 280 Criminal Law – Theft – Mail and Packages (Porch Piracy Act of 2025)

HB 805 Criminal Law - Mail and Package Theft

If the aim is to improve enforcement, the focus should be on better legislation, not more.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 410.

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