Department of Legislative Services

Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 179 (Delegate Toles, *et al.*)
Judiciary Judicial Proceedings

Organized Retail Theft Act of 2025

This bill establishes the offense of "organized retail theft" of property with an aggregate "value" exceeding $1,500. A violation of this prohibition is a felony punishable by specified graduated penalties based on the value of the property involved. A person who violates this prohibition must restore the property to the owner or pay to the owner the full value of the property. A conviction for organized retail theft merges into a conviction under the general theft statute (§7-104 of the Criminal Law Article) for the purposes of sentencing where the two convictions arise from the same acts or transactions. The bill also (1) clarifies the venue for prosecution of a case involving multiple thefts in multiple counties committed by the same person under one scheme or continuing course of conduct and (2) requires the court (on the State's Attorney's request) to make a finding of fact (after specified dispositions for certain offenses) as to whether a crime constitutes organized retail theft.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues from cases that shift to circuit courts under the bill, as discussed below. Potential minimal increase in general fund incarceration expenditures, as discussed below.

Local Effect: Potential minimal increase in local revenues from fines imposed in circuit court cases. The bill is not expected to materially affect local expenditures.

Small Business Effect: Minimal.

Analysis

Bill Summary/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 in **Exhibit 1**.

Exhibit 1
Penalties for Theft

Value of Property and/or Services	Maximum Penalty
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.

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

Scheme/Continuing Course of Conduct and Venue

Under current law, when a person commits a theft under one scheme or continuing 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 in determining whether the theft is a felony or misdemeanor.

The bill specifies that multiple thefts committed by the same person in multiple counties under one scheme or continuing course of conduct may be joined and prosecuted in any county in which any one of the thefts occurred.

Organized Retail Theft

Under the bill, "organized retail theft" means the commission, either alone or in concert with one or more other persons, of a series of thefts of retail merchandise from one or more retail merchants over a 90-day period with the intent to (1) permanently deprive the merchant of the merchandise; (2) return the merchandise to the merchant for monetary or other gain; or (3) resell, trade, or barter the merchandise for monetary or other gain.

Under the general theft statute, "value" means the market value of the property or service at the time and place of the crime or if the market value cannot satisfactorily be ascertained, the cost of the replacement of the property or service within a reasonable time after the crime.

The bill incorporates this definition for organized retail theft. However, under the bill, for the purpose of calculating the aggregate value of property for the offense of organized retail theft, "value" also includes the market value of any property damaged in furtherance of the crime and any costs to repair, replace, or restock any damaged or stolen property.

The bill prohibits a person from committing organized retail theft of property with an aggregate value exceeding $1,500. A violation of this prohibition is a felony punishable by the following maximum penalties, which vary based on the value of the property involved:

- at least $1,500 but less than $25,000: 5 years and/or $10,000;
- at least $25,000 but less than $100,000: 10 years and/or $15,000; and
- $100,000 or more: 20 years and/or $25,000.

A person who violates this prohibition must restore the property to the owner or pay to the owner the full value of the property.

If a defendant is convicted of or receives a probation before judgement for specified offenses under the Criminal Law Article (*e.g.*, general theft, robbery, and burglary), the court, at the request of the State's Attorney, must make a finding of fact based on evidence produced at trial as to whether the crime constitutes organized retail theft. The State has the burden of proving that the crime is organized retail theft by a preponderance of the evidence. If the court does find that the crime is organized retail theft, the finding is part of the court record for purposes of reporting to the Criminal Justice Information System Central Repository.

State Fiscal Effect: While the bill subjects organized retail theft to the same graduated penalties with the same property value brackets as the general theft statute, the bill's organized retail theft provisions may capture behavior that is not addressed under the general theft statute and uses a more generous definition of "value," which affects potential penalties. Furthermore, the bill's provisions regarding joining cases from multiple counties may result in smaller theft cases becoming larger and being subjected to stronger penalties. This estimate assumes that cases involving thefts in multiple counties will not be joined unless they involve stolen property that has a high combined value.

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 may increase minimally due to more people being committed to State correctional facilities and people being committed to State correctional facilities for longer periods of time. The number of people convicted of this proposed crime is expected to be minimal. Any operational impact on the District Court to make specified findings of organized retail theft is not anticipated to materially affect State finances.

The District Court has concurrent jurisdiction with the circuit courts over felony theft offenses under the general theft statute. However, the creation of the new organized retail theft crime as an independent felony (including in cases that also involve a felony general theft charge) and the ability to join multiple cases across jurisdictions that could aggregate to a felony theft means that (1) more 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 incarcerated individual, including overhead,

is estimated at $5,339 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 incarcerated individuals and for (1) incarcerated individuals who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced incarcerated individuals confined in a local detention center between 12 and 18 months; and (3) incarcerated individuals 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.

The Office of the Public Defender (OPD) advises that while there may be some efficiencies to joining charges together for prosecution in a single jurisdiction, the ability to consolidate misdemeanor charges for felony liability will result in significantly more effort and involve more experienced circuit court attorneys, rather than District Court attorneys. OPD further advises that its anticipated impact is the equivalent of one circuit court attorney. The Department of Legislative Services agrees that there may be an increased level of effort for a single circuit court attorney to handle cases that are joined across jurisdictions but advises that the time and effort of multiple District Court attorneys is redirected. Moreover, the bill is not anticipated to result in additional cases or clients for OPD. Thus, the effect on OPD caseloads is expected to be absorbable within existing budgeted resources.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 948 of 2024.

Designated Cross File: SB 11 (Senator Watson) - Judicial Proceedings.

Information Source(s): 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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