

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 408
Judiciary

(Delegate Dumais)

Criminal Procedure - Charging Procedures and Documents - Citation

This bill expands the categories of offenses for which a police officer is required to charge by citation to include any misdemeanor not involving serious injury or an immediate health risk for which the maximum penalty is imprisonment for up to 18 months, as specified. The bill also expands the circumstances under which a police officer may charge a defendant by citation to allow for issuance of a citation even if a defendant is subject to arrest for another criminal charge arising out of the same circumstances but is not subject to arrest for another alleged misdemeanor involving serious injury or immediate health risk, an alleged felony arising out of the same incident, or an open warrant, as specified.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances. It is anticipated that any decrease in expenditures and any efficiencies experienced by the District Court, the Department of State Police (DSP), or the Office of the Public Defender (OPD) as a result of the bill are shifted to other functions.

Local Effect: The bill is not expected to materially affect local finances. It is anticipated that any decrease in local expenditures and any efficiencies experienced by local law enforcement and local detention departments from fewer arrests and pretrial detentions are shifted to other functions.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, a police officer *must* charge by citation for (1) malicious destruction of property if the damage is less than \$500 or (2) misdemeanor theft of property or services valued at less than \$1,000. However, since the maximum penalty for sale of an alcoholic beverage to an underage drinker or an intoxicated person is two years imprisonment and/or a fine of \$1,000, a police officer is not required to charge by citation for that offense.

The bill repeals the specific authorization for a police officer to issue a citation for (1) the sale of an alcoholic beverage to an underage drinker or intoxicated person; (2) malicious destruction of property valued at less than \$500; and (3) misdemeanor theft of property or services valued at less than \$1,000.

Current Law: A police officer must issue a citation for possession of marijuana or any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the maximum penalty of imprisonment is 90 days or less, except for (1) failure to comply with a peace order or protective order; (2) violation of a condition of pretrial or posttrial release while charged with a sexual crime against a minor; (3) possession of an electronic control device after conviction of a drug felony or a crime of violence; (4) violation of an out-of-state domestic violence order; or (5) abuse or neglect of an animal. A police officer may also charge by citation, as specified, for (1) the sale of an alcoholic beverage to an underage drinker or intoxicated person; (2) malicious destruction of property valued at less than \$500; and (3) misdemeanor theft of property or services valued at less than \$1,000.

A police officer may charge a defendant by citation *only* if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer. A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

Theft: Beginning October 1, 2017, a person convicted of theft of property or services with a value of at least \$100 but less than \$1,500, is guilty of a misdemeanor and is subject to, for a first conviction, imprisonment for up to 6 months and/or a fine of up to \$500, and for a second or subsequent conviction, imprisonment for up to 1 year and/or a fine of up to \$500. However, the maximum penalty for the misdemeanor offense of theft of services or property valued at less than \$100 remains at 90 days imprisonment and/or a fine of \$500.

Malicious Destruction of Property: A person may not willfully and maliciously destroy, injure, or deface the real or personal property of another. A violator causing damage of less than \$1,000 to the property is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 60 days and/or a fine of \$500.

Sale of Alcoholic Beverages to an Underage Drinker or Intoxicated Person: An alcoholic beverages licensee or an employee of the licensee (licensee/employee) is prohibited from furnishing alcoholic beverages (1) to a person younger than age 21 or (2) to any person who is visibly under the influence of any alcoholic beverage. Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a maximum fine of \$1,000. Additional jurisdiction-specific penalties may apply.

Background: Chapters 504 and 505 of 2012 repealed the authority for a law enforcement officer to issue a citation for offenses related to (1) the sale of an alcoholic beverage to an underage drinker or intoxicated person; (2) malicious destruction of property valued at less than \$500; and (3) misdemeanor theft of property or services valued at less than \$1,000. Chapter 386 of 2013 reestablished the authority. **Exhibit 1** lists the number of District Court cases for violations of such offenses during fiscal 2016.

Exhibit 1
Fiscal 2016 District Court Cases

<u>Offense</u>	<u>District Court Violations</u>
Misdemeanor theft (under \$1,000)	23,392
Sale of alcohol to an intoxicated person/underage drinker	195
Malicious destruction of property (less than \$500)	13,200

Source: District Court of Maryland

State Expenditures: General fund expenditures may decrease minimally for the Judiciary, DSP, and OPD to the extent that the bill reduces the number of District Court commissioner initial appearances by arrestees, the number of arrests, and the number of bail reviews necessary. This decrease may be offset in part by similar costs incurred should the cited defendants fail to appear in court. However, any savings experienced by the Judiciary, DSP, and OPD are likely to be shifted to other functions within those agencies.

Although there were approximately 147,194 total initial appearances as a result of warrant and bench warrant arrests for all misdemeanors and felony charges in fiscal 2016, data is not available on the number of individuals represented by these cases who were charged

with additional offenses that are not eligible for citations or were otherwise ineligible to receive a citation.

Local Expenditures: Carroll, Montgomery and St. Mary's counties, the City of Salisbury, and the Town of Leonardtown advise that the bill does not have a fiscal impact on their jurisdictions. The City of Westminster advises that although it does not have exact data on the number of citations that are issued in lieu of arrests as a result of the bill, the bill does have the potential to reduce the number of hours city officers spend at the county's detention center for processing an arrest (estimated at 30 minutes per arrest).

Additional Information

Prior Introductions: None.

Cross File: SB 477 (Senator Kelley, *et al.*) - Judicial Proceedings.

Information Source(s): Carroll, Montgomery, and St. Mary's counties; cities of Salisbury and Westminster; towns of Bel Air and Leonardtown; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of State Police; Department of Legislative Services

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mm/kdm

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