

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 404

(Senator Cassilly)

Judicial Proceedings

Criminal Law - Arson, Burning, Malicious Destruction, and Theft - Property of Another - Definition

This bill specifies that the definition of “property of another” under the general theft statute includes an interest in property held by the offender as a tenant by the entirety.

The bill also incorporates the definition of “property of another” under the general theft statute, as amended by the bill, into the arson, burning, and malicious destruction of property statutes.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from expanded application of existing monetary penalties in District Court cases. Potential minimal increase in general fund expenditures from expanded application of existing incarceration penalties.

Local Effect: Potential minimal increase in local revenues from expanded application of existing monetary penalties in circuit court cases. Potential minimal increase in local expenditures from expanded application of existing incarceration penalties.

Small Business Effect: None.

Analysis

Current Law:

General Theft – 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; or (4) obtain control over property knowing that the property was lost, mislaid, or was delivered under a mistake as to the identity of the recipient or nature or amount of the property. 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 a \$500 fine
Less than \$1,000	Misdemeanor – 18 months imprisonment and/or a \$500 fine
Less than \$1,000 (two or more prior convictions)	Misdemeanor – 5 years imprisonment and/or a \$5,000 fine
Between \$1,000 and \$10,000	Felony – 10 years imprisonment and/or \$10,000 fine
Between \$10,000 and \$100,000	Felony – 15 years imprisonment and/or \$15,000 fine
\$100,000 or more	Felony – 25 years imprisonment and/or \$25,000 fine

Under the general theft statute, “property of another” means property in which a person other than the offender has an interest that the offender does not have the authority to defeat or impair, even though the offender also may have an interest in the property. While “property of another” is not a term that is mentioned frequently under the general theft statute, it is a component of the statute’s definition of “deprive,” which is repeatedly mentioned.

To “deprive” under the general theft statute means to withhold property of another (1) permanently; (2) for a period that results in the appropriation of a part of the property’s value; (3) with the purpose to restore it only on payment of a reward or other compensation; or (4) to dispose of the property or use or deal with the property in a manner that makes it unlikely that the owner will recover it.

Engaging in specified behavior that intends to deprive an owner of property, deprives an owner of property, or probably will deprive an owner of property constitutes unauthorized control over property or possessing stolen personal property under the general theft statute. The intention to deprive the owner permanently of the use or benefit of property that was lost, mislaid, or delivered by mistake is also a feature of the general theft statute.

It is not a defense to the crime of theft that the defendant has an interest in the property that was the subject of the theft if another person also has an interest in or right to possess the property that the defendant is not entitled to infringe. In determining the right of possession, (1) a joint or common owner of the property does not have a right of possession of the property that is superior to the right of any other joint or common owner of the property and (2) in the absence of a contrary agreement, a person in lawful possession of the property has a right of possession superior to the right of possession of a person who has only a security interest in the property, even if legal title to the property lies with the holder of the security interest under a conditional sale contract or other security agreement.

However, it is a defense to the crime of theft that (1) the defendant acted under a good faith claim of right to the property involved; (2) the defendant acted in the honest belief that the defendant had the right to obtain or exert control over the property as the defendant did; (3) the property involved was that of the defendant's spouse, unless the defendant and the defendant's spouse were not living together as husband and wife and were living in separate residences at the time of the alleged theft; or (4) in a case of theft of a trade secret, the defendant rightfully knew the trade secret, or the trade secret was available to the defendant from a source other than the owner.

Malicious Destruction of Property – A person may not willfully and maliciously destroy, injure, or deface the real or personal property of another. “Property of another” is not defined under the malicious destruction of property statute. A violator causing damage of at least \$1,000 to the property is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$2,500. 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.

In addition to the penalties cited above, the court must order a person convicted of causing malicious destruction by an act of graffiti to pay restitution and/or perform community service.

The value of damage is based on the evidence and that value must be applied for the purpose of imposing penalties. If it cannot be determined from the evidence whether the value of the damage to the property is more or less than \$1,000, the value is deemed to be less than \$1,000. To determine a penalty, the court may consider the aggregate value of

damage to each property resulting from one scheme or continuing course of conduct as one crime. If separate acts resulting in damage to the properties of one or more owners are set forth by separate counts in one or more charging documents, the separate counts may not be merged for sentencing.

Arson and Burning Statutes – The arson and burning criminal statutes are comprised of several offenses, ranging from arson in the first degree to burning a trash container. While “property of another” is not defined under these statutes, that term is mentioned in the malicious burning statutes.

Malicious Burning – A person may not willfully and maliciously set fire to or burn the personal property of another. A violator causing property damage of at least \$1,000 is guilty of the felony of malicious burning in the first degree, which is punishable by imprisonment for up to five years and/or a \$5,000 maximum fine. A violator causing less than \$1,000 in property damage is guilty of the misdemeanor of malicious burning in the second degree, which is punishable by imprisonment for up to 18 months and/or a \$500 maximum fine.

Tenants by the Entirety – Tenancy by the entirety is a joint tenancy between two owners who are spouses on the date of acquisition.

The Court of Appeals has indicated that Maryland “retains the tenancy by the entireties in its traditional form,” *Columbian Carbon Company v. Kight*, 207 Md. 203, 208 (1955), and that when property is conveyed to a husband and wife they are considered to be one person and take the property “not [as parts], but by the entirety.” *Marburg v. Cole*, 49 Md. 402, 411 (1878). As indicated by the *Marburg* court, neither spouse can dispose of the property without the consent of the other and, upon the death of one spouse, the survivor takes the whole of the property. The court has also stated that “it is well settled in this State that property held in a tenancy by the entireties cannot be taken to satisfy the individual debts of a husband and wife.” *Diamond v. Diamond*, 298 Md. 24, 29 (1983).

The court has recognized that a tenancy by the entireties may be created in personal property as well as real property. *Diamond* at 29. The court has also indicated that the proceeds of the sale of real property held as tenants by the entireties also belong to the husband and wife as tenants by the entirety. *Brell v. Brell*, 143 Md. 443, 450 (1923).

The court has indicated an absolute divorce will sever a tenancy by the entirety and that otherwise some form of joint action is necessary to end a tenancy by the entirety. *Bruce v. Dyer*, 309 Md. 421, 428 (1987). Regarding the conveyance of real property, the court has stated, for example, that “the joint action of both [spouses] and a conveyance by both to a third person does terminate a tenancy by the entireties in the land, but the proceeds

ordinarily continue to be held by the entireties.” *Eastern Shore Bldg. & Loan Corp. v. Bank of Somerset*, 253 Md. 525, 532 (1969).

Background: In January 2015, a 48-year-old man from Middletown, New York rented a bulldozer and demolished the home he lived in with his wife while she was away. According to news reports, the wife was on the deed to the home and the husband never asked for her permission to demolish the structure. All of her belongings were still inside the home when it was destroyed. The husband was charged with criminal mischief.

Additional Information

Prior Introductions: None.

Cross File: Although described as a cross file, HB 270 (Delegate B. Wilson, *et al.* – Judiciary) is not identical.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, abcnews.com, Black’s Law Dictionary; Department of Legislative Services

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min/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510