

SENATE BILL 674

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0lr3492
CF 0lr2383

By: **Senator Edwards**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Gun Theft Felony Act of 2020**

3 FOR the purpose of classifying the theft of a firearm as a felony; establishing certain
4 penalties for theft of a firearm; and generally relating to theft of a firearm.

5 BY repealing and reenacting, with amendments,
6 Article – Criminal Law
7 Section 7–104
8 Annotated Code of Maryland
9 (2012 Replacement Volume and 2019 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
11 That the Laws of Maryland read as follows:

12 **Article – Criminal Law**

13 7–104.

14 (a) A person may not willfully or knowingly obtain or exert unauthorized control
15 over property, if the person:

16 (1) intends to deprive the owner of the property;

17 (2) willfully or knowingly uses, conceals, or abandons the property in a
18 manner that deprives the owner of the property; or

19 (3) uses, conceals, or abandons the property knowing the use, concealment,
20 or abandonment probably will deprive the owner of the property.

21 (b) A person may not obtain control over property by willfully or knowingly using
22 deception, if the person:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) intends to deprive the owner of the property;

2 (2) willfully or knowingly uses, conceals, or abandons the property in a
3 manner that deprives the owner of the property; or

4 (3) uses, conceals, or abandons the property knowing the use, concealment,
5 or abandonment probably will deprive the owner of the property.

6 (c) (1) A person may not possess stolen personal property knowing that it has
7 been stolen, or believing that it probably has been stolen, if the person:

8 (i) intends to deprive the owner of the property;

9 (ii) willfully or knowingly uses, conceals, or abandons the property
10 in a manner that deprives the owner of the property; or

11 (iii) uses, conceals, or abandons the property knowing that the use,
12 concealment, or abandonment probably will deprive the owner of the property.

13 (2) In the case of a person in the business of buying or selling goods, the
14 knowledge required under this subsection may be inferred if:

15 (i) the person possesses or exerts control over property stolen from
16 more than one person on separate occasions;

17 (ii) during the year preceding the criminal possession charged, the
18 person has acquired stolen property in a separate transaction; or

19 (iii) being in the business of buying or selling property of the sort
20 possessed, the person acquired it for a consideration that the person knew was far below a
21 reasonable value.

22 (3) In a prosecution for theft by possession of stolen property under this
23 subsection, it is not a defense that:

24 (i) the person who stole the property has not been convicted,
25 apprehended, or identified;

26 (ii) the defendant stole or participated in the stealing of the property;

27 (iii) the property was provided by law enforcement as part of an
28 investigation, if the property was described to the defendant as being obtained through the
29 commission of theft; or

30 (iv) the stealing of the property did not occur in the State.

(4) Unless the person who criminally possesses stolen property participated in the stealing, the person who criminally possesses stolen property and a person who has stolen the property are not accomplices in theft for the purpose of any rule of evidence requiring corroboration of the testimony of an accomplice.

(d) A person may not 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, if the person:

(1) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner;

(2) fails to take reasonable measures to restore the property to the owner;
and

(3) intends to deprive the owner permanently of the use or benefit of the property when the person obtains the property or at a later time.

(e) A person may not obtain the services of another that are available only for compensation:

(1) by deception; or

(2) with knowledge that the services are provided without the consent of the person providing them.

(f) Under this section, an offender's intention or knowledge that a promise would not be performed may not be established by or inferred solely from the fact that the promise was not performed.

(g) (1) **THIS SUBSECTION DOES NOT APPLY TO THEFT OF A FIREARM.**

(2) A person convicted of theft of property or services with a value of:

(i) at least \$1,500 but less than \$25,000 is guilty of a felony and:

1. is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both; and

2. shall restore the property taken to the owner or pay the owner the value of the property or services;

(ii) at least \$25,000 but less than \$100,000 is guilty of a felony and:

1. is subject to imprisonment not exceeding 10 years or a fine not exceeding \$15,000 or both; and

2. shall restore the property taken to the owner or pay the owner the value of the property or services; or

(iii) \$100,000 or more is guilty of a felony and:

1. is subject to imprisonment not exceeding 20 years or a fine not exceeding \$25,000 or both; and

2. shall restore the property taken to the owner or pay the owner the value of the property or services.

[(2)] (3) Except as provided in paragraph **[(3)] (4)** of this subsection, 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:

(i) is subject to:

1. for a first conviction, imprisonment not exceeding 6 months or a fine not exceeding \$500 or both; and

2. for a second or subsequent conviction, imprisonment not exceeding 1 year or a fine not exceeding \$500 or both; and

(ii) shall restore the property taken to the owner or pay the owner the value of the property or services.

[(3)] (4) A person convicted of theft of property or services with a value of less than \$100 is guilty of a misdemeanor and:

(i) is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both; and

(ii) shall restore the property taken to the owner or pay the owner the value of the property or services.

[(4)] (5) Subject to paragraph **[(5)] (6)** of this subsection, a person who has four or more prior convictions under this subtitle and who is convicted of theft of property or services with a value of less than \$1,500 under paragraph **[(2)] (3)** of this subsection is guilty of a misdemeanor and:

(i) is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both; and

(ii) shall restore the property taken to the owner or pay the owner the value of the property or services.

[(5)] (6) The court may not impose the penalties under paragraph **[(4)]**

(5) of this subsection unless the State's Attorney serves notice on the defendant or the defendant's counsel before the acceptance of a plea of guilty or nolo contendere or at least 15 days before trial that:

(i) the State will seek the penalties under paragraph [(4)] **(5)** of this subsection; and

(ii) lists the alleged prior convictions.

(H) (1) A PERSON CONVICTED OF THEFT OF A FIREARM, INCLUDING AN ANTIQUE FIREARM OR A REPLICA OF AN ANTIQUE FIREARM, IS GUILTY OF A FELONY AND IS SUBJECT TO:

(I) FOR A FIRST CONVICTION, IMPRISONMENT FOR NOT LESS THAN 2 YEARS AND NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$1,000 OR BOTH; AND

(II) FOR A SECOND OR SUBSEQUENT CONVICTION, IMPRISONMENT FOR NOT LESS THAN 5 YEARS AND NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$2,500 OR BOTH.

(2) NOTWITHSTANDING § 14–102 OF THIS ARTICLE, THE COURT MAY NOT IMPOSE LESS THAN THE MANDATORY MINIMUM SENTENCE OF:

(I) FOR A FIRST CONVICTION, 2 YEARS; AND

(II) FOR A SECOND OR SUBSEQUENT CONVICTION, 5 YEARS.

(3) THE COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY MINIMUM SENTENCE OF:

(I) FOR A FIRST CONVICTION, 2 YEARS; AND

(II) FOR A SECOND OR SUBSEQUENT CONVICTION, 5 YEARS.

(4) A SENTENCE IMPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SEPARATE FROM AND CONSECUTIVE TO A SENTENCE FOR ANY OTHER OFFENSE.

[(h)] (I) (1) If a person is convicted of a violation under this section for failure to pay for motor fuel after the motor fuel was dispensed into a vehicle, the court shall:

(i) notify the person that the person's driver's license may be suspended under § 16–206.1 of the Transportation Article; and

1 (ii) notify the Motor Vehicle Administration of the violation.

2 (2) The Chief Judge of the District Court and the Administrative Office of
3 the Courts, in conjunction with the Motor Vehicle Administration, shall establish uniform
4 procedures for reporting a violation under this subsection.

5 **[(i)] (J)** An action or prosecution for a violation of subsection **[(g)(2) or (3)]**
6 **(G)(3) OR (4)** of this section shall be commenced within 2 years after the commission of
7 the crime.

8 **[(j)] (K)** A person who violates this section by use of an interactive computer
9 service may be prosecuted, indicted, tried, and convicted in any county in which the victim
10 resides or the electronic communication originated or terminated.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2020.