

Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Kwame R. Brown
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: July 7, 2011

SUBJECT: Fiscal Impact Statement - "Receipt of Stolen Property Amendment Act of 2011"

REFERENCE: Bill 19-215, Draft Committee Print Shared with the OCFO on July 1, 2011

Conclusion

Funds are sufficient in the proposed FY 2012 through FY 2015 budget and financial plan to implement the provisions of the proposed legislation.

Background

The proposed legislation would amend the District of Columbia Theft and White Collar Crimes Act of 1982¹ in two ways. The first change concerns when the *defense of impossibility* can be used. This defense argues that a person cannot be convicted of a crime if the actual crime is legally impossible to accomplish. For example, a person who is accused of attempting to receive stolen property, when the property in question is not actually stolen, can use the defense of impossibility. Such a scenario arises when the Metropolitan Police Department conducts a sting operation in which undercover officers or cooperating witnesses tell potential buyers that they have stolen goods available for sale when, in fact, the goods are not stolen.

Under current law, the defense of impossibility cannot be used when a person is charged with *attempting* to purchase or otherwise obtain property that he or she believes is stolen, but can be used when a person is charged with *completing* the purchase of the believed stolen property.

¹ Effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3201 *et seq.*).

A person convicted of the *attempted* crime only can be convicted of a misdemeanor and subject to a maximum term of imprisonment of 180 days. For the *completed* crime of receiving stolen property, the grade of the offense is determined by the value of the property: if it is under \$1,000, the offense is considered a misdemeanor; if it is over \$1,000, the offense is considered a felony and is punishable by a maximum sentence of seven years.²

Since under current law the defense of impossibility could successfully be used for completed crimes, and not attempted crimes, a person caught in a sting operation is generally charged with *attempt* to receive stolen property and not with receiving stolen property. As a result, even if the value of the property is over \$1,000, the person would only be charged with a misdemeanor. The proposed legislation would rectify this situation by no longer allowing the defense of impossibility for *completing* the purchase of stolen goods.

Second, under current law, amounts received pursuant to a single scheme or systematic course of conduct from theft, fraud, and credit card fraud can be aggregated to determine the grade of the offense. As described above, if the amount is less than \$1,000, the offense is a misdemeanor; if it is greater than \$1,000, it is a felony. The proposed legislation would add any amounts or property received from identity theft, trafficking in stolen property, and receiving stolen property to those that can be aggregated to determine the grade of the offense.

Financial Plan Impact

Funds are sufficient in the proposed FY 2012 through FY 2015 budget and financial plan to implement the provisions of the proposed legislation. The proposed legislation could result in individuals being sentenced as felons instead of misdemeanants. If this were to happen, there would be fewer individuals serving time in the D.C. Jail, which is paid for by the District, and more individuals serving time in the facilities operated by the Federal Bureau of Prisons, which is paid for by the federal government. However, since this legislation would only affect a limited number of individuals, any potential expenditure reductions for the Department of Corrections are expected to be insignificant.

² Individuals sentenced for misdemeanor offenses serve their time at the District's Central Detention Facility (also known as the D.C. Jail). Sentenced felons are transferred to the Federal Bureau of Prisons.