

(A) PLACING OR DISTRIBUTING ANY FLAMMABLE, EXPLOSIVE, OR COMBUSTIBLE MATERIAL OR SUBSTANCE OR DEVICE IN OR NEAR A STRUCTURE OR PERSONAL PROPERTY IN PREPARATION FOR BURNING THAT STRUCTURE OR PROPERTY SHALL BE CONSIDERED AN ATTEMPT TO BURN THAT STRUCTURE OR PROPERTY.

(B) IF A STRUCTURE IS DIVIDED INTO SEPARATELY OWNED OR LEASED UNITS, EACH UNIT SHALL BE CONSIDERED A SEPARATE STRUCTURE FOR PURPOSES OF A PROSECUTION UNDER THIS SUBHEADING.

COMMITTEE NOTE: Subsection (a) retains the current law (now in § 10 above) defining an attempt for purposes of this subheading. The other changes are stylistic.

Subsection (b) is intended to codify the holding of the Court of Appeals in Richmond v. State, 326 Md. 257, 604 A.2d 483 (1992) concerning the unit of prosecution.

[10A.] 10.

(A) [It shall be unlawful for any person or persons to] A PERSON MAY NOT burn or cause to be burned any cross or other religious symbol [upon] ON any private or public property within [this] THE State without the express consent of the owner of [such] THE property and without first giving notice to the fire department which services the area in which [such] THE burning is to take place.

(B) [Any] A person [or persons] who violates [the provisions of] this section [shall, upon conviction, be deemed] IS guilty of a felony and [shall suffer punishment for a period not to exceed 3 years or shall be fined an amount not to exceed \$5,000 or shall suffer both such fine and imprisonment in the discretion of the court] ON CONVICTION IS SUBJECT TO A FINE OF NOT MORE THAN \$5,000 OR IMPRISONMENT FOR NOT MORE THAN 3 YEARS OR BOTH.

COMMITTEE NOTE: The changes to this section are stylistic. The Committee discussed the constitutionality of this provision in reference to the recent U.S. Supreme Court case of R.A.V. v. St. Paul, U.S. ____, 112 S.Ct. 2538 (1992) and the case in the Circuit Court for Prince George's County of State v. Sheldon (CT 92-0081A and CT 92-0817X) in which the court held that this section is facially unconstitutional. In light of the fact that the State is appealing the Sheldon case and the unsettled law in this area, the Committee decided not to attempt to amend this section at the present time. The Committee may revisit this issue in the future.

[11.

Any person, who, while perpetrating, or attempting to perpetrate, a crime, shall set fire to or burn any of the buildings enumerated in this subtitle, shall, upon conviction thereof, be sentenced to the penitentiary for not more than three years.]

COMMITTEE NOTE: In light of the current penalties attaching to burning a structure under this revision, the Committee struck this provision as unnecessary.