HB 531

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 531 (Delegate Niemann)
Judiciary

Criminal Law - Mail Theft - Penalty

This bill prohibits a person from knowingly or willfully removing, taking, possessing, obtaining, or receiving "mail" without the permission of the U.S. Postal Service or the intended recipient. A violator is guilty of a misdemeanor and subject to maximum penalties of three years imprisonment and/or a fine of $5,000. The bill also repeals the current law prohibition against opening a letter without permission.

The bill allows for a prosecution of this misdemeanor at any time. A prosecution for mail theft does not preclude a prosecution for general theft.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Current Law: A person may not take and break open a letter that is not addressed to the person without permission from the person to whom the letter is addressed or the personal representative of the addressee's estate. A violator is guilty of a misdemeanor and subject to penalties of imprisonment for six days and a fine of $15.

A person convicted of theft of property or services valued at less than $100 is guilty of a misdemeanor and is subject to maximum penalties of imprisonment of 90 days and/or a $500 fine. A person convicted of theft of property with a value of less than $1,000 is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a fine of $500.

Chapter 655 of 2009 (HB 66) increased the maximum property value for misdemeanor theft from less than $500 to less than $1,000 and created the three tiers of felony theft listed below:

Value of Property and/or Services	**Maximum Penalty**
At least $1,000 and less than $10,000	10 years imprisonment and/or a $10,000 fine
At least $10,000 and less than $100,000	15 years imprisonment and/or a $15,000 fine
At least $100,000 or more	25 years imprisonment and/or a $25,000 fine

A person who has two or more theft convictions who is convicted of theft of property or services valued at less than $1,000 is guilty of misdemeanor theft and subject to enhanced maximum penalties of five years imprisonment and/or a $5,000 fine. Regardless of value, a person convicted of theft must restore the owner's property or pay the owner for the value of the property.

If a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary or that a person is subject to § 5-106(b) of the Courts and Judicial Proceedings Article, the State may institute a prosecution for the misdemeanor at any time. Generally, a prosecution for a misdemeanor must be instituted within one year after the offense was committed.

Background: This bill is one of the measures recommended by the Task Force to Study Identity Theft. The task force was created by Chapters 241 and 242 of 2005 (SB 43/HB 818) and extended by Chapters 9 and 10 of 2007 (SB 70/HB 26). Among other things, the task force was directed to (1) study the problems associated with identity theft in Maryland, including the adequacy of Maryland law in deterring identity theft; (2) consult with relevant State and federal agencies and other experts on identity theft; and (3) make recommendations regarding possible remedies to identity theft, including statutory changes.

The task force met six times between November 15, 2006, and December 6, 2007, and heard from law enforcement agencies, bank security officers, citizens, credit card companies, and consumer advocates about the prevalence of identity theft and ways in which the crime could be prevented. The task force also received testimony from the U.S. Postal Inspection Service recommending that the unauthorized possession of mail be criminalized. The U.S. Postal Inspection Service testified that its officers have found that unauthorized mail possession is often a predicate offense to identity fraud. The task force also heard testimony from the State Archivist whose identity was stolen and his financial accounts compromised because the thief stole mail from his home mailbox. While theft of mail is a federal crime, the U.S. Postal Inspection Service testified that criminalizing the unauthorized possession of mail would provide another valuable tool in apprehending identity thieves, perhaps before commission of an identity fraud crime. For purposes of preventing identity fraud, it is the wrongful possession of mail and the use of the personal information often contained in mail that needs to be addressed by law enforcement, more than the physical theft of the mail. The task force unanimously agreed to recommend this legislation to the General Assembly. California and Minnesota are among the states that have criminalized the unauthorized possession of mail.

In February 2012, the Federal Trade Commission (FTC) and the Consumer Sentinel Network (CSN), a consortium of national and international law enforcement and private security entities, released the *Consumer Sentinel Network Data Book* for calendar 2011. According to the report, CSN received 279,156 identity theft complaints during calendar 2011, up from 86,250 complaints in calendar 2001. Identity theft was the most popular type of complaint CSN received during 2011. Maryland had 4,980 complaints, making it the state with the ninth-highest rate of complaints per 100,000 population. Theft of government documents or benefits and credit card fraud were the two most popular types of identity theft reported by Maryland residents during calendar 2011.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at $2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable medical care and variable operating costs) is about $370 per month. Excluding all medical care, the average variable costs total $180 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A $45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional $45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A $45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional $45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately $60 to $160 per inmate in recent years.

Additional Information

Prior Introductions: Similar bills have been introduced during past sessions. HB 272 of 2012 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 646, was withdrawn. HB 862 of 2011 received an unfavorable report from the House Judiciary Committee. HB 328 of 2009, a similar bill, received an unfavorable report from the House Judiciary Committee. Its cross file, SB 148, received an unfavorable report from the Senate Judicial Proceedings Committee. This bill is also similar to SB 116/HB 444 of 2008. Both bills received unfavorable reports from the Senate Judicial Proceedings and House Judiciary committees, respectively. In 2007, HB 293, another similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Carroll, Cecil, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Maryland State Commission on Criminal Sentencing Policy;

Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; State's Attorneys' Association; Federal Trade Commission – *Consumer Sentinel Network Data Book for January – December 2011;* Department of Legislative Services

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