

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 318
Judiciary

(Delegate Solomon, *et al.*)

Criminal Law - Theft - Mail and Mail Depository Key

This bill generally prohibits the knowing or willful theft of “mail” or an “arrow key” or other device used to gain access to a “mail depository” that is owned by the United States Postal Service (USPS). The bill also establishes graduated penalties based on (1) the number of pieces of mail stolen; (2) the type of information contained in the mail stolen; or (3) the status of the intended recipient of the mail stolen as an “elderly person” or “vulnerable adult.” A conviction for violating any of the bill’s prohibitions does not merge with a conviction for any other crime based on the acts establishing the violation.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary:

Theft of Mail

The bill prohibits a person from knowingly or willfully and without permission of the intended recipient removing mail from a “mail depository” with the intent to deprive the

intended recipient of the mail. **Exhibit 1** lists the graduated penalties for the crime of mail theft based on the number of pieces of mail stolen. A conviction for violating this prohibition does not merge with a conviction for any other crime based on the act establishing the violation. A “mail depository” is a mailbox, letter box, or receptacle in which mail is deposited or stored.

Exhibit 1
Penalties for Mail Theft

Number of Pieces of Mail

Penalties

Fewer than 10 pieces of mail

Misdemeanor – imprisonment for up to 1 year and/or a maximum fine of \$4,000

At least 10 but less than 30 pieces of mail

Felony – imprisonment for at least 180 days and up to 2 years and/or a maximum fine of \$10,000

30 or more pieces of mail

Felony – imprisonment for at least 2 years and up to 10 years and/or a maximum fine of \$10,000

Source: Department of Legislative Services

Theft of Arrow Key or Other Device Used to Gain Access to a Mail Depository

Under the bill, a person may not willfully or knowingly and without permission of the owner obtain an “arrow key” or other device used to gain access to a mail depository owned by USPS. A person who violates this prohibition is guilty of a felony and on conviction is subject to imprisonment for no less than 5 years and up to 99 years and/or a maximum fine of \$10,000. A conviction for violating this prohibition does not merge with a conviction for any other crime based on the act establishing the violation. “Arrow key” means an instrument that allows a mail carrier to access a mail depository.

Theft of Mail Containing Personal Identifying Information

The bill also prohibits a person from committing the above crime of mail theft by taking mail that contains an item of “personal identifying information” (as defined under current law) with the intent to facilitate the crime of identify fraud under § 8-301 of the Criminal Law Article. **Exhibit 2** lists the graduated penalties for this crime based on the number of

HB 318/ Page 2

pieces of mail stolen. A conviction for violating this prohibition does not merge with a conviction for any other crime based on the act establishing the violation.

Exhibit 2

Penalties for Mail Theft Containing an Item of Personal Identifying Information

Number of Pieces of Mail

Penalties

Less than 10 pieces of mail	Felony – imprisonment for at least 6 months and up to 3 years and/or a maximum fine of \$10,000
At least 10 but less than 20 pieces of mail	Felony – imprisonment for at least 3 years and up to 10 years imprisonment and/or a maximum fine of \$10,000
At least 20 but less than 50 pieces of mail	Felony – imprisonment for at least 2 years and up to 20 years and/or a maximum fine of \$10,000
50 or more pieces of mail	Felony – imprisonment for at least 5 years and up to 99 years and/or a maximum fine of \$10,000

Source: Department of Legislative Services

Theft of Mail Containing Personal Identifying Information Against an Intended Recipient Who Is an Elderly Person or a Vulnerable Adult

A person is also prohibited from committing the crime of mail theft (as established under the bill) containing an item of personal identifying information when the intended recipient is an “elderly person” (defined under the bill as someone at least age 68) or a “vulnerable adult” (defined under current law as an adult who lacks the physical or mental capacity to provide for their daily needs). **Exhibit 3** lists the graduated penalties for this crime based on the number of intended mail recipients. A conviction for violating this prohibition does not merge with a conviction for any other crime based on the act establishing the violation.

Exhibit 3
Penalties for Theft of Mail Containing Personal Identifying Information Against an Intended Recipient Who Is an Elderly Person or a Vulnerable Adult

Number of Intended Recipients

Penalties

Fewer than 10 intended recipients	Felony – imprisonment for at least 2 years and up to 10 years and/or a maximum fine of \$10,000
At least 10 but less than 50 intended recipients	Felony – imprisonment for at least 2 years and up to 20 years and/or a maximum fine of \$10,000
50 or more intended recipients	Felony – imprisonment for at least 5 years and up to 99 years and/or a maximum fine of \$10,000

Source: Department of Legislative Services

Current Law:

Opening a Letter without Permission

Under the Criminal Law Article, a person is prohibited from taking and breaking open a letter that is not addressed to them 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 imprisonment for six days and a fine of \$15.

General Theft Statute

Under the general theft statute, 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; (4) obtain control over property knowing that the property was lost, mislaid, or delivered under a mistake as to the identity of the recipient or nature or amount of the property; or (5) obtain the services of another that are available only by compensation by deception or with knowledge that the services are provided without the provider's consent. 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 in **Exhibit 4**.

Exhibit 4
Penalties for Theft

<u>Value of Property and/or Services</u>	<u>Maximum Penalty</u>
Less than \$100*	Misdemeanor – 90 days imprisonment and/or \$500 fine
At least \$100 but less than \$1,500*	Misdemeanor – 6 months imprisonment and/or \$500 fine (first conviction) or 1 year imprisonment and/or \$500 fine (second or subsequent conviction)
Less than \$1,500 (four or more prior theft convictions)**	Misdemeanor – 5 years imprisonment and/or \$5,000 fine
At least \$1,500 but less than \$25,000	Felony – 5 years imprisonment and/or \$10,000 fine
At least \$25,000 but less than \$100,000	Felony – 10 years imprisonment and/or \$15,000 fine
\$100,000 or more	Felony – 20 years imprisonment and/or \$25,000 fine

*Subject to two-year statute of limitations.

**Subject to specified notice requirements.

Source: Department of Legislative Services

Postal Service-related Theft under Federal Law

It is a federal crime to steal any property used by USPS, as specified under 18 USC § 1707. On conviction a violator is subject to a fine and/or (1) if the value of the stolen property does not exceed \$1,000, a maximum penalty of one year imprisonment or (2) if the value of stolen property is more than \$1,000, a maximum penalty of three years imprisonment.

It is also a federal crime to steal or receive stolen mail, as specified under 18 USC § 1708. On conviction a violator is subject to a fine and/or a maximum penalty of five years imprisonment.

Sentencing for Crimes with Minimum and Maximum Penalties – § 14-102 of the Criminal Law Article

If a law sets a maximum and a minimum penalty for a crime, the court may impose instead of the minimum penalty a lesser penalty of the same character. This rule does not affect (1) a maximum penalty fixed by law or (2) the punishment for any crime for which the statute provides one and only one penalty.

Personal Identifying Information

Under current law, “personal identifying information” includes a name, address, telephone number, driver’s license number, Social Security number, place of employment, employee identification number, health insurance identification number, medical identification number, mother’s maiden name, bank or other financial institution account number, date of birth, personal identification number, unique biometric data, including fingerprint, voice print, retina or iris image or other unique physical representation, digital signature, credit card number, or other payment device number.

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

State Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of costs for incarcerated individuals. The number of people convicted of this proposed crime cannot be reliably determined without actual experience under the bill but 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 incarcerated individual, including overhead, is estimated at \$5,110 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. The State provides assistance to the counties for locally sentenced incarcerated individuals and for (1) incarcerated individuals who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced incarcerated individuals confined in a local detention center between 12 and 18 months; and (3) incarcerated individuals who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender (OPD) advises that the bill increases the workload in existing cases and may result in new cases. OPD estimates the increase is equivalent to one additional attorney at a cost of \$89,686 in fiscal 2025 and increasing to \$122,681 by fiscal 2029. The Department of Legislative Services advises that while the bill may increase workloads for OPD, the magnitude of any such increase, and the need for additional staff, cannot be reliably determined without actual experience under the bill. Thus, to the extent that current staffing levels prove insufficient, OPD can request additional resources through the annual budget process.

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

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. *Per diem* operating costs of local detention facilities have ranged from approximately \$90 to \$300 per inmate in recent years.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 373 (Senator Waldstreicher) - Judicial Proceedings.

Information Source(s): Baltimore, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - January 26, 2024
km/aad

Analysis by: Amber R. Gundlach

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