

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 116 (Senator Kelley, *et al.*) (Task Force to Study Identity Theft)
Judicial Proceedings

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 imprisonment for three years 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.

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.

If a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary or that a person is subject to section 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 and extended by Chapters 9 and 10 of 2007. Among other things, the task force was directed to • study the problems associated with identity theft in Maryland, including the adequacy of current Maryland law in deterring identity theft; • consult with relevant State and federal agencies and other experts on identity theft; and • 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, Dr. Edward Papenfuse, 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.

The Identity Theft Data Clearinghouse, sponsored by the Federal Trade Commission (FTC) and the Consumer Sentinel, a consortium of national and international law enforcement and private security entities, released *Identity Theft Victim Complaint Data* for calendar 2006 (the latest information available). In calendar 2006, FTC received 246,035 identity theft complaints. In calendar 2005, the number of identity theft complaints was 255,613. In Maryland, residents reported 4,656 instances of identity theft in 2006, or 82.9 complaints per 100,000 population, ranking Maryland eleventh in the

nation for identity theft. As has been the case for the last several years, the most common type of identity theft was credit card fraud, which comprised 25% of all complaints. The second most prevalent type of identity fraud involved the opening of new accounts for wireless devices, utilities and the telephone, at 16% of all complaints.

In November 2007, FTC released a national survey, *The 2006 Identity Theft Survey Report*. FTC reports that the survey suggests that 8.5 million U.S. adults discovered that they were victimized by some form of identity theft in calendar 2005.

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

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to people being committed to Division of Correction (DOC) 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 DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 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 DOC inmate (including medical care and variable costs) is \$526 per month. Excluding medical care, the average variable costs total \$148 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 DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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

Local Expenditures: Expenditures could 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 90 days of the sentence, plus part of the per diem cost after 90 days.

Per diem operating costs of local detention facilities are expected to range from \$40 to \$129 per inmate in fiscal 2009

Additional Information

Prior Introductions: This is a prior introduction of HB 293 of 2007, which received an unfavorable report from the House Judiciary Committee.

Cross File: HB 444 (Delegate Niemann, *et al.*) (Task Force to Study Identity Theft) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Federal Trade Commission, National Conference of State Legislatures, Department of Legislative Services

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