

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 272
Judiciary

(Delegate Niemann)

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. However, if a person is convicted of mail theft and general theft based on the same act or transaction, the conviction for mail theft must merge into the conviction for general theft for sentencing purposes.

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 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:

| <u>Value of Property and/or Services</u> | <u>Maximum Penalty</u> |
|---|--|
| 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 and extended by Chapters 9 and 10 of 2007. 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.

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 2007 (the latest information available). In calendar 2007, FTC received 258,427 identity theft complaints. In calendar 2006, the number of identity theft complaints was 246,124. In Maryland, residents reported 4,821 instances of identity theft in 2007, or 85.8 complaints per 100,000 population, ranking Maryland tenth 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 28% 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 19% 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 increase minimally as a result of the bill's incarceration penalty due to more 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 \$2,900 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 DOC

inmate (including variable medical care and variable operating costs) is about \$385 per month. Excluding all medical care, the average variable costs total \$170 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. 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 Division of Correction 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 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 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 Division of Correction 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: 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 of 2009, 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): Harford and Montgomery counties, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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