

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 946
Judiciary

(Delegate Toles)

Criminal Law - Theft - Mail and Packages (Porch Piracy Act of 2024)

This bill prohibits the knowing or willful theft of “mail or package,” which is defined as an item delivered or left to be collected by the United States Postal Service (USPS) or a delivery service company that delivers tangible personal property. A person who violates this prohibition is guilty of a felony and on conviction is subject to imprisonment for up to five years.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill’s penalty provision, as discussed below. General fund revenues decrease minimally, as discussed below.

Local Effect: Minimal decrease in local expenditures due to the bill’s penalty provision, as discussed below. Revenues are not materially affected.

Small Business Effect: None.

Analysis

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 1**.

Exhibit 1
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 the 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.

State Revenues: General fund revenues decrease minimally from fines imposed in District Court cases (under the general theft statute) that shift to the circuit courts under the bill.

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase minimally as a result of the bill's incarceration penalty due to people being committed to State correctional facilities rather than local facilities. This estimate assumes (1) most mail and package thefts are not reported to law enforcement and are not represented in the offense data in **Exhibit 2**; (2) mail and package thefts represent a small portion of the guilty dispositions listed in Exhibit 2; (3) individuals who received probation for theft in **Exhibit 3** are unlikely to be sentenced to incarceration under the bill; (4) the majority of stolen mail or packages have a value of less than \$1,500; and (5) as a result of plea bargaining, individuals subject to the bill's provisions are more likely to be sentenced under the general theft statute than under the bill.

Overall, the bill is not anticipated to materially affect the expenditures of the Judiciary, the Maryland State Commission on Criminal Sentencing Policy, or, as discussed below, the Office of the Public Defender (OPD).

Relevant Offense Data

Exhibit 2 contains information on the number of violations and guilty dispositions in the District Court and the circuit courts over the last two fiscal years under the general theft statute. Information is not available on how many of these violations and guilty dispositions involved the theft of mail or packages.

Exhibit 2
Violations and Guilty Dispositions for Offenses under the General Theft Statute for
Fiscal 2022 and 2023

	<u>Fiscal 2022</u>		<u>Fiscal 2023</u>	
	<u>Violations</u>	<u>Guilty Dispositions</u>	<u>Violations</u>	<u>Guilty Dispositions</u>
<u>District Court Offenses</u>				
Theft less than \$100	6,775	706	7,420	693
Theft at least \$100 but less than \$1,500	11,263	1,062	12,758	1,246
Theft at least \$1,500 but less than \$25,000	5,261	170	5,432	207
Theft at least \$25,000 but less than \$100,000	800	6	852	13
Theft \$100,000 or more	58	2	54	1
<u>Circuit Court Offenses</u>				
Theft less than \$100	913	103	1,008	97
Theft at least \$100 but less than \$1,500	2,531	422	2,740	525
Theft at least \$1,500 but less than \$25,000	1,542	197	1,739	232
Theft at least \$25,000 but less than \$100,000	227	33	325	40
Theft \$100,000 or more	28	9	25	13

Source: Maryland Judiciary; Department of Legislative Services

Department of Public Safety and Correctional Services

DPSCS advises that the bill has a potential significant impact on incarceration expenditures. Exhibit 3 displays the number of individuals referred to the Division of Parole and Probation (DPP) within DPSCS for theft less than \$100 and theft of at least

\$100, but less than \$1,500. Data is not available on how many of the DPP cases listed below involve theft of mail or a package. Regardless, DPSCS advises that if even a portion of these individuals are incarcerated in State facilities under the bill it would have a significant effect on the Division of Correction within DPSCS. As noted above, this analysis assumes that mail or package thefts represent a small portion of the offenses listed in Exhibit 2, individuals sentenced to probation under the general theft statute are unlikely to be sentenced to incarceration under the bill, and individuals subject to the bill's provisions are more likely to be sentenced under the general theft statute (which is still an available option).

Exhibit 3
Individuals Referred to the Division of Parole and Probation for Violations of Specified Theft Offenses in Fiscal 2023

<u>Offense</u>	<u>Number of Individuals Referred to the Division of Parole and Probation</u>
Theft less than \$100	317
Theft at least \$100 but less than \$1,500	1,053

Source: Department of Public Safety and Correctional Services; Department of Legislative Services

Thus, general fund expenditures for DPSCS increase minimally as a result of the bill's incarceration penalty due to people being committed to State correctional facilities rather than local facilities as a result of the increased penalty provision.

Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

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.

Office of the Public Defender

OPD advises that the bill will result in new cases for OPD requiring the equivalent of one attorney statewide at an estimated cost of \$96,187 in fiscal 2025 increasing to \$132,186 by fiscal 2029. However, the bill creates a new felony offense for which individuals are likely already charged under the existing general theft statute. While the bill may result in an increased effort for existing OPD clients who are now charged with a felony offense under the bill (rather than only misdemeanor general theft offenses), OPD can likely accommodate any increased level effort within existing budgeted resources.

Local Expenditures: Local expenditures decrease minimally due to individuals shifting from local detention facilities to State correctional facilities.

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: None.

Information Sources: Howard and Prince George's 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

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