

Legislative Analysis



MAIL AND MAIL DEPOSITORY PROTECTION ACT

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Senate Bill 23 (H-1) as reported from committee
Sponsor: Sen. Jim Runestad

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 24 (H-1) as reported from committee
Sponsor: Sen. Peter J. Lucido

(Enacted as Public Acts 48 and 49 of 2019)

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 6-25-19

BRIEF SUMMARY: Senate Bill 23 would create a new act, the Mail and Mail Depository Protection Act, to prohibit certain conduct regarding mail that is addressed to another person and to establish criminal penalties, including enhanced penalties for repeat offenses, for a violation of the act.

Senate Bill 24 would place the felony penalties for a violation of the new act within the sentencing guidelines.

Each bill would take effect 90 days after its enactment.

FISCAL IMPACT: Senate Bill 23 would have an indeterminate fiscal impact on state and local units of government, as discussed in the **Fiscal Information** section, below.

THE APPARENT PROBLEM:

The increasing trend toward shopping online and the delivery by local stores of groceries and other purchases has led to more home deliveries by the United States Postal Service (USPS) and private delivery companies such as UPS, FedEx, and Amazon. As deliveries have increased, so have reports of mail and packages being stolen. Thieves sometimes follow delivery trucks and can make off with packages before a person, even when home, can get to the door. Young children are brought into mail theft schemes, as law enforcement in some municipalities report picking up the same youths over and over. Whether committed by an individual or an organized gang, thefts of mail and packages from homes and businesses have escalated nationwide to the point where perpetrators are referred to as “porch pirates.” Despite the humorous name, there is nothing funny when Social Security checks or much needed prescription medications, new credit cards, bills, or gifts go missing. According to the USPS, from October 2018 to February 2019, at least 5,000 Amazon packages, 140 checks, and 63 deliveries of prescription medications went missing (presumably many were stolen). Just from February to March 2019, another 1,346 Amazon packages, 42 checks, and 59 prescriptions also went missing.

As sometimes happens when technology advances or public behavior shifts, gaps in the law become apparent. Prosecutors say that current state laws are not flexible enough to be

used to prosecute the type of mail and delivery thefts occurring today. For example, theft of a Social Security check is only prosecutable under state law if the check is cashed or attempted to be cashed. Contents of a package may not be worth enough to cross thresholds triggering appropriate penalties under the larceny statutes. Though mail theft is a crime under federal law, federal law enforcement agents and courts face high caseloads of crimes that pose more serious threats to public safety, and so a missing gift or medication may be deemed low priority. Legislation has been offered to update state laws to create a specific criminal penalty for taking or destroying mail or packages addressed to another person.

THE CONTENT OF THE BILLS:

Senate Bill 23 would create the Mail and Mail Depository Protection Act to prohibit a person from taking hold [of], concealing, or destroying mail addressed to another person with the intent to defraud any person or deprive the person to whom the mail was addressed of the mail.

The bill would apply whether an individual whose mail was obtained, or attempted to be obtained, was alive or deceased at the time of the violation.

Mail would mean a letter, postcard, package, bag, or other article or thing contained therein, or other sealed article addressed to a person.

Person would mean an individual, partnership, corporation, limited liability company, association, or other legal entity.

A violation of the act that was a first offense would be a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$500, or both.

A second or subsequent violation would be a felony punishable by imprisonment for up to five years or a fine of up to \$1,000, or both.

A person could be charged with, convicted of, or sentenced for any other violation of law committed by that person using mail obtained in violation of the act or any other violation of law committed by that person while violating or attempting to violate the act.

Senate Bill 24 would amend the Code of Criminal Procedure to place the felony penalty provision of the new act within the sentencing guidelines. Under the bill, a second or subsequent offense of mail theft would be a Class E felony against the public order with a maximum term of imprisonment of five years.

Senate Bill 24 is tie-barred to SB 23, which means that it could not take effect unless SB 23 were also enacted.

MCL 777.14h

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted substitute bills for SBs 23 and 24. Changes to Senate Bill 23 include the following:

- Eliminated definitions for *mail depository* and *mail carrier*.
- Eliminated the affirmative defense to an alleged violation.
- Simplified the elements constituting a mail theft crime by specifically prohibiting taking, concealing, or destroying mail addressed to another with the intent to defraud or deprive the addressee of his or her mail.
- Eliminated the enhanced penalty for a third or subsequent offense, instead providing an enhanced penalty for a second or subsequent offense.
- Eliminated the separate penalty for theft of mail with the intent to commit fraud.

Senate Bill 24 was amended to reflect the revisions to the felony penalties made by the amendments to Senate Bill 23.

FISCAL INFORMATION:

Senate Bill 23 would have an indeterminate fiscal impact on the state and on local units of government, as the bill could lead to an increase in the number of individuals convicted of misdemeanors and/or felonies. Information is not available on the number of persons who might be convicted under provisions of the bill. Any new felony convictions would result in increased costs related to state prisons and state probation supervision if the convictions result in imprisonment. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. New misdemeanor convictions would result in increased costs related to county jails and/or local misdemeanor probation supervision if the convictions result in imprisonment. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 24 is a companion bill to Senate Bill 23 and amends sentencing guidelines. The bill would have not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

Though “porch pirates” can strike anywhere, urban areas such as Wayne and Oakland Counties appear to be particularly susceptible. For example, of the 1,900 mail theft complaints and 17,000 Amazon package theft complaints reported between 2017 and 2018,

Oakland County accounted for over 20% of the mail complaints and over 5% of the Amazon package theft complaints.

Currently, state laws do not fit some cases of mail and package theft, and if federal law enforcement officers do not follow up, a case does not get prosecuted. By creating a deterrent to would-be porch pirates, the bills could discourage theft of mail that could contain Social Security or refund checks, veterans' benefits, job offers, important social invitations, and bills. This could provide relief to residents statewide who rely on, or prefer, having packages and medicines delivered to their door.

As reported by the Senate, Senate Bill 23 reflected language and penalties in federal law, but was cumbersome and did not fit well in Michigan's criminal law structure. The House committee substitute streamlines both the prohibition and the penalty for a violation, with a felony penalty for repeat offenders. There is a clear requirement of intent to commit fraud or to deprive a person of his or her mail that must be met, so not to inadvertently criminalize such helpful acts as picking up the mail or a package for a neighbor who is on vacation or at work or sorting and throwing out grandmother's junk mail. In short, the bill provides law enforcement with a tool to enforce mail theft penalties and hopefully curb further acts.

Against:

No arguments in opposition were offered in response to the House substitutes.

POSITIONS:

A representative of the Wayne County Prosecutor's Office testified in support of the bills. (6-11-19)

The Department of State Police indicated support for the bills. (3-19-19)

The Prosecuting Attorneys Association of Michigan indicated support for the bills. (3-19-19)

The Michigan Bankers Association indicated a neutral position on the bills. (6-18-19)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.