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BILL



ANALYSIS

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Senate Bills 23 and 24 (as introduced 1-15-19)
Sponsor: Senator Jim Runestad (S.B. 23)
Senator Peter J. Lucido (S.B. 24)
Committee: Judiciary and Public Safety

Date Completed: 1-29-19

CONTENT

Senate Bill 23 would enact the "Mail and Mail Depository Protection Act" to do the following:

- **Prohibit a person from taking certain actions with respect to mail that was addressed to another person.**
- **Allow a person to assert one or more specified affirmative defenses to an alleged violation of the proposed Act.**
- **Prescribe felony penalties for violations of the proposed Act.**

Senate Bill 24 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by Senate Bill 23.

Senate Bill 24 is tie-barred to Senate Bill 23. Each bill would take effect 90 days after its enactment.

Senate Bill 23

Prohibitions

Under the proposed Act, a person could not do any of the following with respect to mail that was addressed to another person:

- Knowingly and intentionally remove mail from a mail depository.
- Knowingly and intentionally take mail from a mail carrier.
- Obtain custody of mail by intentionally deceiving a mail carrier, or other person who rightfully possessed or controlled the mail, by making a written, verbal, or electronic representation that the person knew to be false with intent to deceive, and actually deceive a mail carrier or other person who possessed or controlled the mail.
- Knowingly and intentionally remove the contents of mail.
- Knowingly and intentionally take mail that had been left for delivery at the location specified on the mail.
- Knowingly and intentionally take mail that had been left for collection on or adjacent to a mail depository.
- Knowingly and intentionally destroy or damage mail.
- Receive, possess, transfer, or conceal mail, knowing or having reason to believe the mail was obtained in violation of the Act or in a manner that was otherwise prohibited by the State or Federal law.

"Mail" would mean a letter, postal card, package, bag, or any other article or thing contained therein, or other sealed article addressed to a person. "Mail depository" would mean a mailbox, letter box, or mail receptacle, a post office or a station of a post office, a postal service vehicle, or any authorized depository for mail. "Mail carrier" would mean a person who is employed to deliver and collect mail.

Affirmative Defenses

Except for a person that was charged with obtaining custody of mail through deception, a person could assert one or more of the following as an affirmative defense to an alleged violation of the Act:

- That the person acted with the consent of the person to whom the mail was addressed, unless that person gave consent knowing that the information would be used to commit an unlawful act.
- That the action taken was authorized or required by State or Federal law, rule, or regulation, or a court order or rule.
- That the person was the legal guardian of a child or an adult and was authorized to possess that child's or adult's mail and to make decisions regarding access to it.

A person asserting an affirmative defense described above would have the burden of establishing it by a preponderance of the evidence.

It would be an affirmative defense to a prosecution under the Act that the person lawfully transferred, obtained, or attempted to obtain mail for the purpose of detecting, preventing, or deterring mail theft or another crime. The defendant would have the burden of establishing the affirmative defense by a preponderance of the evidence.

Penalties

A person who violated the Act would be guilty of a felony punishable as follows:

- By up to five years' imprisonment or a maximum fine of \$25,000, or both.
- By up to 10 years' imprisonment or a maximum fine of \$50,000, or both, if the violation were a second violation.
- By up to 15 years' imprisonment or a maximum fine of \$75,000, or both, if the violation were a third or subsequent violation.

The Act would apply whether a person whose mail was obtained, or attempted to be obtained, if the person were an individual, in violation of the Act was alive or deceased at the time of the violation.

The Act would not prohibit a person from being 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.

A court could order that a term of imprisonment imposed under the Act be served consecutively to any term of imprisonment imposed for a conviction of 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

The bill would include the felonies proposed by Senate Bill 23 in the sentencing guidelines, as shown in the table below.

<u>Violation</u>	<u>Category</u>	<u>Class</u>	<u>Stat Max</u>
Mail theft	Public Order	E	5
Mail theft - second offense	Public Order	D	10
Mail theft - third or subsequent offense	Public Order	C	15

MCL 777.14h (S.B. 24)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 23

The bill would have a negative fiscal impact on the State and local government. New felony arrests and convictions under the proposed Act could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. However, it is unknown how many people would be prosecuted under the bill's provisions. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$5,315 per prisoner per year. Any additional revenue from imposed fines would go to local libraries.

Senate Bill 24

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Joe Carrasco
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.