



Senate Fiscal Agency
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Senate Bills 23 and 24 (as enacted)
Sponsor: Senator Jim Runestad (S.B. 23)
Senator Peter J. Lucido (S.B. 24)
Senate Committee: Judiciary and Public Safety
House Committee: Judiciary

PUBLIC ACTS 48 & 49 of 2019

Date Completed: 11-25-19

RATIONALE

Reportedly, mail theft is on the rise in Michigan. Mail theft is different from other property theft because mail often contains sensitive personal or financial information. For this reason, mail theft often is associated with other crimes, such as fraud and identity theft. The ability to prosecute mail theft is a first line of defense against criminals looking to commit more serious crimes. Some people believe that the United States Postal Inspection Service (USPIS), the law enforcement arm of the U.S. Postal Services, has insufficient resources to investigate every mail theft complaint it receives. Evidently, the U.S. Attorney's Office has a high threshold for the value of stolen goods needed to investigate mail theft, which leaves many mail theft cases unprosecuted at the Federal level.

Previously, Michigan law provided little authority to prosecute mail theft at the State or local level. To deter mail theft and provide additional authority to prosecute mail thieves, it was suggested that the theft or destruction of mail be addressed specifically in a new act.

CONTENT

Senate Bill 23 enacts the "Mail and Mail Depository Protection Act" to prohibit a person from taking, holding, 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, and prescribe misdemeanor and felony penalties for violations of the proposed Act.

Senate Bill 24 amends the sentencing guidelines in the Code of Criminal Procedure to include the felonies prescribed in Senate Bill 23 as a Class E felony against public order, with a statutory maximum sentence of five years' imprisonment.

The bills will take effect on December 16, 2019.

Senate Bill 23 is described in greater detail below.

Under the Act, a person may not take, hold, conceal, or destroy mail addressed to another person with the intent to defraud any person or deprive the person to whom the mail is addressed of the mail. "Mail" means a letter, postal card, package, bag, or any other article or thing contained therein, or other sealed article addressed to a person. "Person" means an individual, partnership, corporation, limited liability company, association, or other legal entity.

A person who violates the Act is guilty of a crime as follows:

- A misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$500, or both.
- A felony punishable by up to five years' imprisonment or a maximum fine of \$1,000, or both, if the violation is a second or subsequent violation.

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

The Act does 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.

MCL 777.14h (S.B. 24)

BACKGROUND

Federal Procedures

In fiscal year 2018, the USPS initiated over 1,350 cases involving mail theft, which resulted in almost 2,500 arrests and over 2,100 convictions, according to the USPS's 2018 Annual Report. A conviction for mail theft under Federal law is a felony punishable by imprisonment or both. The U.S. Attorney's Office is responsible for prosecuting these cases.

Rising Mail Theft

In 2018, there were 17,000 complaints of Amazon packages not received, 1,916 mail theft reports, 168 prescription theft reports, 155 complaints of mail tampering, and 399 reports of check theft in Michigan, according to testimony presented before the Senate Committee on Judiciary and Public Safety. A February 2019 article from the *Associated Press* reported that between October 2018 and February 2019, the USPS received more than 5,000 reports of stolen Amazon packages, over 300 reports of stolen credit cards, 140 reports of stolen checks, and more than 50 reports of stolen medications from Michigan residents.¹

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

While mail theft is a Federal crime, it often is not prosecuted because of a lack of resources and the high financial loss threshold necessary for prosecution. Since mail theft complaints often are concentrated in local areas, local law enforcement agencies have a strong interest to investigate and prosecute the crime within their respective jurisdictions.

Local and State law enforcement agencies that wish to prosecute mail theft that has been left unprosecuted at the Federal level find themselves unable to do so under current Michigan law. For example, package theft is included under the criminal prohibitions against larceny, but it is hard to prove that a financial loss occurred, which is necessary for a larceny conviction. The law does not criminalize the theft of letters, credit cards, personal financial information, or checks, unless the check is cashed or credit cards are used. Additionally, stolen property that is valued under \$200 is classified as petty larceny and is punishable only as a misdemeanor. Mail thieves can be prosecuted for associated crimes that can result from mail theft (such as fraud and identity theft), but there is little statutory authority to prosecute the mail theft itself.

¹ Eggert, David, "Michigan Senate approves bills to combat mail theft", *Associated Press*, 2-28-19.

The bills criminalize and establish penalties for mail theft and subsequent offenses, giving local and State law enforcement the tools necessary to enforce this crime when the Federal government is unable to do so. Since mail theft is on the rise in the United States and in Michigan, this bill is an important step in reducing the amount of mail theft and the costs it imposes on Michigan residents.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 23

The bill will have a negative fiscal impact on the State and local government. New felony arrests and convictions under the proposed Act may increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. However, it is unknown how many people will 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 goes to local libraries.

Senate Bill 24

The bill will 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 are not 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.