

# HOUSE BILL REPORT

## SHB 1145

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### As Amended by the Senate

**Title:** An act relating to mail theft.

**Brief Description:** Establishing mail theft provisions.

**Sponsors:** House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Overstreet, Hurst, Klippert, Hinkle, Angel, Ross, Nealey, Warnick, Kirby, Short, Fagan, Hunt, Kelley, Eddy, Bailey, Kenney, McCune and Condotta; by request of Attorney General).

#### **Brief History:**

##### **Committee Activity:**

Public Safety & Emergency Preparedness: 1/26/11, 2/11/11 [DPS].

##### **Floor Activity:**

Passed House: 3/1/11, 95-3.

Senate Amended.

Passed Senate: 4/5/11, 49-0.

#### **Brief Summary of Substitute Bill**

- Establishes the crime of Mail Theft as an unranked class C felony offense.
- Establishes the crime of Possession of Stolen Mail as an unranked class C felony offense.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

**Staff:** Yvonne Walker (786-7841).

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Washington's theft statute punishes a person based upon the value of the property stolen. A person commits theft if he or she:

- wrongfully obtains or exerts unauthorized control over the property or services of another with intent to deprive him or her of the property or services;
- by color or aid of deception, obtains control over the property or services of another with the intent to deprive him or her of the property or services; or
- appropriates lost or misdelivered property or services of another with intent to deprive him or her of the property or services.

A person commits Possession of Stolen Property if he or she knowingly receives, retains, possesses, conceals, or disposes of stolen property knowing that it has been stolen and to withhold or appropriate the property to the use of any person other than the true owner.

Washington's criminal statute does not have a specific crime relating to "Mail Theft" or "Possession of Stolen Mail."

Generally, federal law governs most postal crimes. Under the federal statute, a person is guilty of "Obstruction of Mail" if he or she takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with the intent to obstruct the correspondence, to pry into the business or secrets of another, or to open, secrete, embezzle, or destroy the mail. The penalty is up to five years of imprisonment, up to \$250,000 fine, or both imprisonment and a fine.

### **Summary of Substitute Bill:**

#### Mail Theft.

A person is guilty of Mail Theft if he or she: (1) possesses stolen mail addressed to three or more different mailboxes; and (2) possesses a minimum of 10 separate pieces of stolen mail. Each item of mail that is stolen is a separate and distinct crime. Mail theft is an unranked class C felony offense (carrying a maximum sentence of up to 12 months in jail).

#### Possession of Stolen Mail.

A person is guilty of Possession of Stolen Mail if he or she: (1) possesses stolen mail addressed to three or more different mailboxes; and (2) possesses a minimum of 10 separate pieces of stolen mail. "Possesses stolen mail" means to knowingly receive, retain, possess, conceal, or dispose of stolen mail knowing that it has been stolen, and to withhold or appropriate the use of it to any person other than the true owner or the person to whom it is addressed. The fact that the person who stole the mail has not been convicted, apprehended, or identified, is not a defense to the charge of possessing stolen mail. Each item of stolen mail possessed constitutes a separate and distinct crime and may be punished accordingly. Possession of Stolen Mail is an unranked class C felony offense.

"Mail" is defined as any letter, postal card, package, bag, or other item that is addressed to a specific address for delivery by the United States Postal Service or any commercial carrier performing the function of delivering similar items to residences or businesses, provided the mail: (1) is addressed to a specific name of an individual person or with a family name or

specific company, business or corporation name on the outside of the item of mail or on the contents inside; and (2) is not addressed to any general occupant or resident of the address or fails to provide an identifiable person or company, business or corporation; and

- has been left for collection or delivery in a letter box, mailbox, mail receptacle, or other authorized depository for mail, given to a mail carrier, or left with any private business that provides mailboxes or mail addresses for customers or when left in a similar location for collection or delivery by any commercial carrier;
- is in transit with a postal service, mail carrier, letter carrier, commercial carrier, or that is at or in a postal vehicle, postal station, mailbox, postal airplane, transit station, or similar location of a commercial carrier; or
- has been delivered to the intended address, but has not been received by the intended addressee.

Mail does not include: magazines, catalogs, direct mail inserts, newsletters, advertising circulars, or any mail that is considered third class mail by the United States Postal Service for purposes of a Mail Theft or Possession of Stolen Mail offense.

"Mailbox" includes any authorized depository or receptacle of mail for the United States Postal Service or authorized depository for a commercial carrier that provides services to the general public, including any address to which mail is or can be addressed, or a place where the United States Postal Service or equivalent commercial carrier delivers mail to its addressee.

"Received by the intended addressee" means that the addressee, owner of the delivery mailbox, or authorized agent has removed the delivered mail from its delivery mailbox.

#### **EFFECT OF SENATE AMENDMENT(S):**

A person is guilty of Mail Theft or Possession of Stolen Mail if he or she: (1) steals or possesses stolen mail addressed to three or more different mailboxes; and (2) steals or possesses a minimum of 10 separate pieces of stolen mail. In regards to both crimes:

- In the House version of the bill, "each item" of mail that is stolen or possessed constitutes a separate and distinct crime and may be punished accordingly.
- In the Senate's amendment, "each set of 10 separate pieces of mail" stolen or possessed constitutes a separate and distinct crime and may be punished accordingly.

In addition, the Senate amendment adds language such that if a person commits any other crime in the commission of mail theft or possession of stolen mail, that person may be prosecuted for the additional crimes.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This legislation was created as a recommendation from the Washington Law Enforcement Group against Identity Theft (also known as LEGIT). This bill increases mail theft and possession of stolen mail from a misdemeanor to a class C felony offense. The crime of Theft in the third degree when it relates to mail theft is really identity theft. Mail theft is a precursor to identity theft. This crime can destroy a person's bank account and destroy one's credit.

Federal prosecutors do not pursue mail theft unless it involves very large rings.

(Opposed) There is opposition to the bill primarily because of the way mail is defined. If someone stole a commercial publication like a magazine then that would constitute a felony. It appears that the goal of this legislation is to protect financial information, personal identifying information, and medical information. The definition of mail should be amended to reflect those three areas.

In one section of the bill it provides that if the mail has been delivered to the intended address but has not been received by the intended addressee then that constitutes mail theft. The problem with this section is that mail is sometimes delivered to the wrong address. If mail is taken out of one mailbox and walked over and delivered to another neighbor's house then that could constitute Possession of Stolen Mail.

**Persons Testifying:** (In support) Representative Overstreet, prime sponsor; Lisa Erwin, Law Enforcement Group Against Identity Theft; and Melinda Young, King County Prosecutor's Office.

(Opposed) Michael Hanbey, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

**Persons Signed In To Testify But Not Testifying:** None.