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CRIMINAL LAW AND PROCEDURE MANUAL

The fourth edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is now available for purchase in print and eBook formats.

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CRIMINAL LAW

Mail and Mail Depository Protection Act enacted to add the crime of mail theft

Public Act 48 of 2019 enacted the Mail and Mail Depository Protection Act (MMDPA), [MCL 445.31](#) to [MCL 445.33](#), which creates a new crime relating to the theft of mail addressed to another person.

Definitions

"Mail" means a letter, postal card, package, bag, or anything contained therein, or other sealed article addressed to a person. [MCL 445.32\(a\)](#).

"Person" includes an individual and a legal entity, such as a partnership, corporation, limited liability company, or association. [MCL 445.32\(b\)](#).

Prohibited Conduct

A person shall 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 was addressed of the mail. [MCL 445.33\(1\)](#). It does not matter whether the person whose mail is obtained, or attempted to be obtained, is alive or deceased when the violation occurs. [MCL 445.33\(3\)](#).

A violation, first offense, is punishable as a one-year misdemeanor. [MCL 445.33\(2\)\(a\)](#). A second or subsequent violation is punishable as a five-year felony. [MCL 445.33\(2\)\(b\)](#).

Officers should be aware that there is no requirement under the MMDPA that the mail is or was under the custody of a postal system or deposited or left in a mailbox or other authorized depository.

Furthermore, a person charged under MCL 445.33 may also be charged with any other violation of law committed by that person while violating or attempting to violate MCL 445.33 or using mail obtained in violation of MCL 445.33.

BACK TO BASICS

An officer may be liable for failing to intervene to prevent another officer from violating an individual's constitutional rights

An officer who fails to intervene may be liable for the preventable harm caused by the actions of other officers, if the officer observed or had reason to know that a violation of a constitutional right was occurring, and the officer had both the opportunity and the means to prevent the violation.

For example, in [Ortiz v. Kazimer](#), the United States Court of Appeals, Sixth Circuit, explained that "police officers are liable for failing to stop ongoing excessive force when they observe it and can reasonably prevent it." In this case, the officer arrived at an apartment complex to investigate an armed robbery and observed another officer allegedly pinning the plaintiff (a 16-year-old boy with Down syndrome) against a vehicle for 15 minutes while he was handcuffed, crying in pain, and not resisting. The officer heard a witness state that the plaintiff was not the suspect she saw, and the officer allegedly make racial slurs during the incident.

The Court held that there was sufficient evidence to allow a jury to decide whether the officer was entitled to qualified immunity or, instead, was liable for failing to prevent the other officer's use of excessive force.

In [Bunkley v. City of Detroit](#), the Sixth Circuit reaffirmed that the duty to intervene extends beyond the excessive force context. In this case, four officers participated in a murder investigation, which led to the plaintiff's arrest. The plaintiff, after being exonerated from the criminal charges, filed a lawsuit asserting that the officers were liable for making or failing to prevent a false arrest that was not supported by probable cause.

The Court held that there was sufficient evidence, based on the specific facts alleged, to allow a jury to decide whether the officers were liable for making or failing to prevent a false arrest.

Officers are reminded that their civil liability is assessed individually based on his or her own actions. As a result, officers have a duty to not actively or directly participate in violating an individual's constitutional rights, in addition to the duty to affirmatively intervene to prevent other officers from violating an individual's constitutional rights.