SB 387

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 387 (Senator Kelley, *et al.*)
Judicial Proceedings

Crimes - Identification Theft - Vulnerable Children

This bill establishes several criminal offenses relating to theft of the identity of a minor who is in foster care in the State, in the custody of the State, or in the custody of a State or local agency ("vulnerable child").

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions to the extent that the bill results in convictions that would otherwise not occur under current law.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions to the extent that the bill results in convictions that would otherwise not occur under current law.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a person from knowingly, willfully, and with fraudulent intent possessing, obtaining, or helping another to possess or obtain the personal identifying information of a "vulnerable child" in order to use, sell, or transfer the information to receive a benefit, credit, good, service, or other thing of value in the name of the child. A person is also prohibited, with fraudulent intent, from knowingly and willfully assuming the identity of a vulnerable child to receive a benefit, credit, good, service, or other thing of value.

If the item of value involved in the offense is worth less than $500, a violator is guilty of a misdemeanor, punishable by imprisonment for up to 18 months and/or a maximum fine of $5,000. If the item of value involved in the offense is worth more than $500, a violator is guilty of a felony, punishable by imprisonment for up to 15 years and/or a maximum fine of $20,000. Violators must (1) restore the item taken to the owner or if the owner is deceased, to the owner's estate or (2) pay the owner/owner's estate the value of the item taken.

A person may not, with fraudulent intent, knowingly and willfully assume the identity of a vulnerable child to (1) avoid identification, apprehension, or prosecution for a crime or (2) avoid payment of debts or other legal obligations. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 18 months and/or a maximum fine of $5,000.

A sentence imposed for these offenses may be separate from and consecutive to or concurrent with a sentence for any crime based on the act(s) establishing the violation. A prosecution for any of these offenses or a crime based on the act establishing the commission of any of these offenses may be commenced in the county where the victim resides or where an element of the crime occurred. A charge under the provisions of the bill must be brought within one year from the time the theft was discovered, or reasonably could have been discovered.

Current Law: State law contains identity fraud provisions that apply to any individual regardless of age or foster care status.

Identity Fraud

The term "personal identifying information" means a name, address, telephone number, driver's license number, Social Security number, place of employment, employee identification number, mother's maiden name, bank or other financial institution account number, date of birth, personal identification number, credit card number, or other payment device number.

A person may not knowingly, willfully, and with fraudulent intent possess, obtain, or help another to possess or obtain any individual's personal identifying information without the consent of that individual to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value in the name of that individual. A person may not knowingly and willfully assume the identity of another, including a fictitious person, to avoid identification, apprehension, or prosecution for a crime or with fraudulent intent to get a benefit, credit, good, service, or other thing of value or to avoid payment of debts or other legal obligations. A person may not knowingly and willfully claim to represent another person without the knowledge and consent of that person, with the intent to solicit, request, or take any action to otherwise induce another person to provide personal identifying information or a payment device number.

If the benefit, credit, good, service, or other thing that is the subject of the crime is valued at $500 or more, then a person who violates this identity fraud provision is guilty of a felony and is subject to maximum penalties of 15 years imprisonment and/or a fine of $25,000. If the benefit or other thing has a value of less than $500, or if a person knowingly and willfully assumes the identity of another to avoid identification, apprehension, or prosecution for a crime, then the violator is guilty of a misdemeanor and is subject to maximum penalties of 18 months imprisonment and/or a fine of $5,000.

If circumstances reasonably indicate that a person's intent was to manufacture, distribute, or dispense another individual's personal identifying information without the individual's consent, the violator is guilty of a felony and is subject to imprisonment for up to 15 years and/or a fine up to $25,000. If the violation is committed pursuant to a scheme or continuing course of conduct, the conduct may be considered one offense. The value of goods or services may be combined to determine whether the violation is a felony or misdemeanor.

In addition to restitution under Title 11, Subtitle 6 of the Criminal Procedure Article, a court may order a person who pleads guilty or *nolo contendere* or who is found guilty of identity fraud to make restitution to the victim for reasonable costs, including reasonable attorney's fees, incurred (1) for clearing the victim's credit history or credit rating and (2) in connection with a civil or administrative proceeding to satisfy a debt, lien, judgment, or other obligation of the victim that arose because of the identity fraud.

Security Freezes

Chapters 208 and 209 of 2012 (SB 295/HB 555) establish a procedure for a "protected consumer's representative" to request that a consumer reporting agency place a security freeze on the protected consumer's consumer report. A "protected consumer" is (1) an individual younger than age 16 or (2) an incapacitated person or a protected person for whom a guardian or conservator has been appointed.

The laws require a consumer reporting agency to place a security freeze for a protected consumer if the agency receives such a request from the protected consumer's representative. The agency must place the freeze within 30 days of receipt of the request. A consumer reporting agency is prohibited from releasing the protected consumer's consumer report, any information derived from the report, or any record created for the protected consumer, unless a security freeze is removed, with certain exceptions.

The laws establish a similar procedure for a protected consumer or the representative to request the agency to remove the security freeze. The agency must remove the freeze within 30 days after receiving the request. The agency may also remove a security freeze for a protected consumer or delete a record of a protected consumer if the freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

A consumer reporting agency may not charge a fee for any service related to a security freeze other than its placement and removal. Additionally, an agency may not charge a fee for the placement and removal of the security freeze in a case of reported identity theft or for a minor for whom a consumer report already exists.

Background: The Federal Trade Commission has noted that personal information for children in foster care is often circulated widely within schools and social services networks, which leaves the children particularly vulnerable to identity theft. According to the Children's Law Center of Minnesota, the children may become victims at the hands of their foster care providers or family members who still have access to their personal information. These children often have no knowledge that they are victims of identity theft until they are adults and age out of the foster care system excited to start an independent life, only to find that they are unable to secure a car loan, an apartment lease, or a student loan through no fault of their own.

In an attempt to address this issue, the federal Child and Family Services Improvement Act requires that every foster child who has reached age 16 must receive a free consumer report each year until the child is discharged from care. The children must also receive assistance in interpreting and resolving any inaccuracies within the report.

The California Office of Privacy Protection conducted a year-long study of the credit of 2,110 foster youth ages 16 and 17 in Los Angeles County. The credit checks revealed that 104 of these children had discrepancies in their reports. According to officials, the children had 247 accounts that could have caused them problems in the future. The average account balance was $1,810; however, one child had a home loan of $217,000 taken out in the child's name. In some cases, simple error was to blame for the credit report discrepancies.

In fiscal 2012, the District Court reports the following charges for identity fraud:

Charge	**Total**
Obtaining personal identifying information without consent to obtain things or services	763
Assumption of another to avoid prosecution, payment of debt, or to get thing or benefit	1,527

State Fiscal Effect: The bill imposes penalties that are similar to the penalties under the identity fraud statute. To the extent that the bill results in prosecutions and convictions that are otherwise unavailable under existing statute, general fund revenues and expenditures are affected.

General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at $2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable medical care and variable operating costs) is about $370 per month. Excluding all medical care, the average variable costs total $180 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A $45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional $45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Fiscal Effect: The bill imposes penalties that are similar to the penalties under the identity fraud statute. To the extent that the bill results in prosecutions and convictions that are otherwise unavailable under existing statute, local revenues and expenditures are affected.

Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A $45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional $45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately $60 to $160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Dorchester, Garrett, and Montgomery counties; Office of the Attorney General; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Federal Trade Commission; Children's Law Center of Minnesota; *U.S. News and World Report*; *California Bar Journal*; GPO.gov; Wisconsin Department of Children and Families; Yahoo! News; National Resource Center for Youth Development; California Office of Privacy Protection; Department of Legislative Services

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