

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader - Revised

House Bill 68
Judiciary

(Delegate Simonaire, *et al.*)

Criminal Law - Impersonating a Military Member - Penalties (Stolen Valor Act of 2016)

This bill prohibits a person from misrepresenting oneself as a specified military member or falsely holding oneself out to be a recipient of military decorations or medals meeting specified criteria if the person does so knowingly and with the intent to obtain money, property, or other tangible benefit.

Violators are guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$2,500.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, a person is prohibited from knowingly and with the intent to obtain money, property, or other benefit (1) misrepresenting oneself as a member or veteran of the U. S. Armed Forces or an organized militia or (2) falsely holding oneself out to be a recipient of any decoration or medal created by federal or State laws or regulations

to honor the members or veterans of the U.S. Armed Forces or an organized militia, including several specified medals, badges, and identifiers.

Current Law: Under federal law (18 U.S.C. §704(b)), a person may not fraudulently hold himself/herself out to be a recipient of specified military decorations or medals with the intent to obtain money, property, or other tangible benefit. Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a maximum fine of \$100,000.

While there are no statutory provisions under Maryland law specifically pertaining to fraudulently misrepresenting oneself as a member of the U.S. Armed Forces, Maryland law prohibits a person from, with fraudulent design on person or property, falsely representing that the person is a police officer, special police officer, sheriff, deputy sheriff, or constable. With specified exceptions, a person is also prohibited from having, using, wearing, or displaying a uniform, shield, badge, or other specified items worn by members of the State Police, police officers, sheriffs, deputy sheriffs, or constables. Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a \$2,000 maximum fine. Similar provisions exist for impersonation of firefighters or emergency services personnel.

State law also prohibits unauthorized use of insignia of veterans' organizations. Violators are guilty of a misdemeanor, punishable by a maximum fine of \$25. If the payment of a fine is defaulted, a violator is subject to imprisonment for up to 30 days.

Background: The current federal statute, also referred to as the Stolen Valor Act of 2013, was preceded by the Stolen Valor Act of 2005. That statute made it a federal crime for a person to "...falsely represent himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States..." A violation was a misdemeanor, punishable by up to six months and/or applicable fines with an enhanced penalty of imprisonment for up to one year and/or applicable fines for violations involving the Congressional Medal of Honor.

However, in *U.S. v. Alvarez*, 567 U.S. ___ (2012), the U.S. Supreme Court held that the content-based restrictions on speech under the Stolen Valor Act of 2005 were too broad and violated the right to free speech under the First Amendment to the U.S. Constitution. While the court rejected the government's argument that in general, false statements are not protected under the First Amendment, the court did note instances in which governmental content-based restrictions on free speech did not violate the First Amendment. One of the examples the court cited was when the restriction was limited to false claims made to effect a fraud or secure something of value, such as money or employment.

In addition to criminalizing false verbal or written representations of having earned military honors (which was the subject of *Alvarez*), the Stolen Valor Act of 2005 also prohibited the knowing, unauthorized wearing of military medals or decorations. The 2013 version of the Stolen Valor statute does not contain this prohibition. On January 11, 2016, an 11-judge panel of the U.S. Court of Appeals for the Ninth Circuit ruled that the unauthorized wearing of medals portion of the Stolen Valor Act of 2005 is unconstitutional. According to the court, wearing a military medal, even one that is unearned, is symbolic speech and conveys a message that is protected speech under the First Amendment.

The case (*United States v. Swisher*, No. 11-35796 (filed January 11, 2016)), involved a Marine who was appealing his 2007 conviction under the 2005 version of the federal Stolen Valor Act for wearing military medals he did not earn. The appellant, who was honorably discharged from the Marine Corps into the reserves in 1957, was also convicted of (1) making false statements to the U.S. Department of Veterans Affairs regarding his military service, disabilities, and honors, in an effort to obtain benefits; (2) forging or altering his certificate of discharge in order to obtain benefits; and (3) theft of government funds (the Post Traumatic Stress Disorder benefits he received as a result of the false statements and forged documents).

The court held that the reasoning in *Alvarez* that applied to false representations about military honors also applied to the portion of the statute prohibiting the unauthorized wearing of military honors/decorations and that the statute failed the scrutiny tests contained in *Alvarez*. The court also held that *Alvarez* could be applied retroactively to the appellant's conviction.

Several states, including New Jersey and Wisconsin, have enacted laws criminalizing fraudulent misrepresentation of military service or honors.

The Department of Public Safety and Correctional Services advises that three individuals are currently serving sentences in State correctional facilities for impersonating a police officer.

Additional Information

Prior Introductions: None.

Cross File: SB 6 (Senator Simonaire) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Public Safety and Correctional Services, Department of Veterans Affairs, Military Department, New Jersey Legislature, Wisconsin Legislature, U.S. Supreme Court, SCOTUS Blog, U.S. Court of Appeals for the Ninth Circuit, *Los Angeles Times*, Department of Legislative Services

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