

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE

House Bill 1003  
Judiciary

(Delegate Petzold, *et al.*)

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Identity Fraud - Victims - Order of Court

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This bill establishes procedures under which a person who is the victim of identity fraud may obtain a court order establishing that the person is a victim of identity fraud.

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Fiscal Summary

**State Effect:** Potential significant increase in District Court expenditures, if a large number of identity fraud victims seek to obtain a court order in District Court.

**Local Effect:** Potential significant increase in circuit court expenditures, if a large number of identity fraud victims seek to obtain a court order in circuit court. **The bill may impose a mandate on a unit of local government.**

**Small Business Effect:** None.

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Analysis

**Bill Summary:** A person who reasonably believes that the person is the victim of identity fraud may a petition the District Court or a circuit court for an expedited determination that the person is the victim of identity fraud. The petition may also be filed with the court holding a criminal proceeding for identity fraud.

Immediately after a petition has been filed, the court shall provide a copy to the State's Attorney for the county in which the petition was filed. The State's Attorney may respond to the petition within 30 days after receipt, and may provide testimony at a hearing on the petition.

At least 30 days after receipt of the petition by the State's Attorney, the court shall conduct a hearing on the petition. If the court determines that the petitioner is the victim of identity fraud, the court shall issue an order declaring that the petitioner is the victim of identity fraud and may also issue such other orders as are necessary to assist the petitioner in correcting erroneous information that has resulted from the identity fraud.

A court may vacate a determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud. An individual who knowingly provides false information in connection with a petition is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days and/or a fine not exceeding \$1,000.

**Current Law:** 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, in order 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 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 the payment of debts or other legal obligations. A person who violates this identity fraud prohibition is guilty of a felony and is subject to imprisonment not exceeding five years and/or a fine not exceeding \$25,000, if the benefit, credit, goods, services, or other thing that is the subject of the crime is valued at \$500 or more. If the benefit or other thing has a value of less than \$500, then the violator is guilty of a misdemeanor and is subject to imprisonment for up to 18 months 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 five years and/or a fine of \$25,000.

A person who knowingly and willfully assumes the identity of another to avoid identification, apprehension, or prosecution for a crime is guilty of a misdemeanor and subject to imprisonment for up to 18 months and/or a fine of \$5,000.

If a violation is committed pursuant to a scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered one offense. The value of goods or services may be aggregated to determine whether the violation is a felony or misdemeanor.

A violator of any of these prohibitions is also subject to a court order for restitution and paying costs related to restoring a victim's identity.

**Background:** Identity theft is commonly regarded as one of the fastest growing crimes in the U.S. In 2003, the Federal Trade Commission (FTC) received 516,740 fraud and identity theft consumer complaints. In 2002, the number of identity and fraud complaints received was 404,000. In 2003, there were 214,905 identity theft reports and 301,835 fraud complaints.

Maryland was ranked eleventh out of 50 states for identity theft, with 74.9 victims per 100,000 population and 4,124 reported identity theft victims. The most common type of identity theft in Maryland was credit card fraud, occurring to 1,533 victims. About 37% of identity theft victims reported this form of identity theft. Phone or utilities fraud occurred in 22% of reported cases, and bank fraud occurred in 18% of reported cases. The areas of Maryland that contained the highest reports of identity theft were Baltimore, Silver Spring, Rockville, Gaithersburg, and Bethesda.

However, not everyone reports identity theft to FTC. The Identity Theft Resource Center estimates that 7 million persons (nationwide) became victims of identity theft during 2002.

All 50 states and the District of Columbia have provisions relating to identity theft. In 1998, the federal government enacted the Identity Theft and Assumption Deterrence Act, which makes it a federal crime to knowingly transfer or use the means of identification of another person with the intent to commit a violation of federal law or a felony under any state or local law. In 2003, the federal government enacted amendments to the Fair Credit Reporting Act called the Fair and Accurate Credit Transactions Act of 2003. The federal law is intended to provide additional deterrence to identity theft, but also contains preemptions of state authority relating to enforcement of identity theft provisions enacted after 2003.

**State Expenditures:** There were 135 charges of identity theft filed in District Court in fiscal 2003. Allowing victims to participate in trials based on these charges and obtain the court order contemplated by this bill should not prove overly burdensome to the District Court. However, there are potentially thousands of victims who would be granted an independent right of action under this bill. This would result in a significantly increased workload for District Court judges and personnel, if a substantial percentage of victims choose to avail themselves of this opportunity.

**Local Expenditures:** In fiscal 2003, there were 1,488 identity fraud charges filed in the circuit courts. While allowing victims to intervene could potentially lengthen these trials,

this should have no significant impact on circuit court finances. However, granting a private right of action to all victims of identity fraud to file suit for a court order in the circuit courts could significantly increase circuit court expenditures.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - March 7, 2004  
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Analysis by: Rita A. Reimer

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510