

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 257

(Senator Frosh, *et al.*)

Judicial Proceedings

Judiciary

Criminal Procedure - Identity Theft - Venue for Prosecution

This bill states that an action for the crime of identity fraud may be commenced in any county in which an element of the crime occurred, or where the victim resides. The bill also provides that a State's Attorney or the Attorney General may investigate and prosecute a case of identity fraud. If the Attorney General is the prosecuting authority, the Attorney General has all the powers and duties of a State's Attorney, including the use of a grand jury in any county or Baltimore City, to investigate and prosecute the violation.

Fiscal Summary

State Effect: Efficiency savings due to consolidation of trials involving the same victim and the same defendant. State law enforcement agencies will no longer have to participate in separate trials in each jurisdiction in which an element of the crime occurred.

Local Effect: Minimal – see above.

Small Business Effect: None.

Analysis

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, a fine not exceeding \$25,000, or both, if the benefit, credit, good, service, 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 up to \$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 up to \$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 up to \$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.

Law enforcement officers may operate without regard to jurisdictional boundaries to investigate identity fraud provisions, within specified limitations. The authority may be exercised only if an act related to the crime was committed in the jurisdiction of an investigative agency or a complaining witness resides in an investigating agency's jurisdiction. Notification of an investigation must be made to appropriate law enforcement personnel. However, once an investigation is complete, detectives in one county must contact other jurisdictions in which crimes have occurred involving the same victim and request that they file charges in those jurisdictions.

A person generally commits the crime of theft when the person willfully or knowingly: (1) obtains unauthorized control over property with the intent to deprive the owner of the property; or (2) uses, conceals, or abandons property in a manner that deprives or

probably will deprive the owner of the property. If the value of the property is \$500 or more, a violator is guilty of a felony and is subject to a maximum fine of \$25,000, imprisonment for up to 15 years, or both. If the property's value is less than \$500, a violator is guilty of a misdemeanor and is subject to a maximum fine of \$500, imprisonment for up to 18 months, or both. The violator must also return the stolen property or make appropriate restitution.

Background: Identity theft is commonly regarded as one of the fastest growing crimes in the U.S. In September 2003, the Federal Trade Commission (FTC) released an *Identity Theft Survey Report*, the results of which indicate that 9.9 million Americans may have been victimized by some form of identity theft in the past year. FTC received 516,740 fraud and identity theft consumer complaints in calendar 2003. It is not unusual for a defendant who has stolen a victim's identity to use the stolen identity in numerous jurisdictions throughout the State.

Additional Information

Prior Introductions: None.

Cross File: HB 457 (Delegate Petzold *et al.*) – Judiciary.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Commission on Criminal Sentencing Policy, Office of the Attorney General, Department of Public Safety and Correctional Services, Department of Legislative Services

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