

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 123 (Senators Forehand and Kramer)
Judicial Proceedings

Identity Fraud - Victim - Expungement of False Criminal Record

This bill allows a victim of identity theft to seek expungement of any police, court, or other record resulting from the arrest of another person unlawfully using the victim's name or identity. The court that orders the expungement must note in writing that the expungement was ordered because the person was a victim of identity theft.

The court may order a person who pleads guilty or *nolo contendere*, or who is convicted of identity fraud in connection with the unauthorized use of a victim's name or identity, to make restitution to the victim for reasonable costs, including reasonable attorney's fees, incurred in connection with the expungement.

Fiscal Summary

State Effect: While the number of requests for expungements could potentially increase under this bill, it is not expected to have a significant impact on State finances.

Local Effect: Minimal – see above.

Small Business Effect: None.

Analysis

Current Law: A person may not possess, obtain, or help another to possess or obtain the personal identifying information of another, without consent, to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value in the name of the individual. A person may not 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 avoid payment of debt or other obligation.

The penalties for identity fraud vary depending on the nature of the offense:

- if the benefit, credit, goods, services, or thing of value has a value of \$500 or greater, the person is guilty of a felony and is subject to imprisonment of up to 5 years, a \$5,000 fine, or both;
- if the benefit, credit, goods, services, or thing of value has a value of less than \$500, the person is guilty of a misdemeanor and is subject to imprisonment of up to 18 months, a \$5,000 fine, or both;
- a person who is convicted of violation of this statute and the circumstances reasonably indicate that the person's intent was to manufacture, distribute, or dispense another's information without their consent is guilty of a felony and is subject to imprisonment of up to 5 years, a \$5,000 fine, or both; and
- 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 is subject to imprisonment of up to 18 months, a \$5,000 fine, or both.

The values of the benefits, credit, goods, service, or other thing of value may be aggregated to determine whether the violation is a misdemeanor or felony if the violations are part of a continuing course of conduct or one scheme.

A person who has been charged with the commission of a crime may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, and gubernatorial pardon.

The State's Attorney is served with a copy of each petition for expungement. If the State's Attorney objects to the petition within 30 days, the court holds a hearing to determine whether the person is entitled to expungement.

A petition for expungement costs \$30. "Expungement" with regard to a court record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; or

- if access to a court record or police record can be obtained only by reference to another court record or police record, by the expungement of that record, or the part of it that provides access.

A person is not entitled to expungement if the petition is based on any grounds other than an acquittal or dismissal of charges, and the person has subsequently been convicted of a crime or is a defendant in a criminal proceeding.

Background: Identity theft is commonly regarded as one of the fastest growing crimes in the United States. The Identity Theft Data Clearinghouse of the Federal Trade Commission (FTC) has identified 214,905 victims of this crime between January 2003 and December 2003. There were 4,124 victims in Maryland, with 818 of those victims in Baltimore City. The most common identity crime involved credit card fraud. About 71,000 of the reported crimes involved credit card fraud. About half of credit card identity fraud crimes involve creation of new accounts. Other types of identity fraud involve creation of new phone and utility accounts, creation of new depository accounts, and fraudulent loans. Nationally, identity theft to escape prosecution or identification for criminal acts only accounted for 2.1% of all reported victims.

According to FTC, the states with the highest number of identity theft complaints in 2003 were California, Texas, New York, Florida, and Illinois. The states with the highest number of identity theft complaints per capita were Arizona, Nevada, California, Texas, and Florida. Maryland ranks eleventh in complaints per capita and fifteenth in total complaints. To date, only Colorado, the District of Columbia, and Vermont do not have specific laws related to identity theft.

In 1998, Congress passed the Federal Identity Theft and Assumption Deterrence Act. The law 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.

State Effect: There were approximately 17,347 petitions for expungement filed in the District Court in fiscal 2004, compared with 1,185 charges of identity theft. A petition for expungement costs \$30.

It is impossible to determine how many of these charges could lead to a petition for expungement as contemplated by this bill, *i.e.*, where the offense resulted in a criminal record in the victim's name. Any increase in the District Court workload could be handled with existing resources. Any revenue increase from additional expungement fees is expected to be minimal.

Local Expenditures: There are no statewide statistics on expungements kept at the circuit court level. In the Uniform Court System database system, which does not include all circuit courts, there were 253 petitions for expungement filed. In three counties, 916 petitions for expungement were filed: Montgomery County – 294; Prince George’s County – 299; and Baltimore City – 458. In calendar 2004, there were only 155 charges of identity theft brought in the circuit court.

As with the District Court, it is impossible to determine how many of these charges could lead to a petition for expungement as contemplated by this bill. Any increase in the circuit court workload could be handled with existing resources. Any revenue increase from additional expungement fees is expected to be minimal.

Additional Information

Prior Introductions: SB 542 of 2004, an identical bill, was withdrawn prior to a hearing.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2005
ncs/jr

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