

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 428

(Senators Giannetti and Stone)

(Committee to Revise Article 27 – Crimes and Punishments)

Judicial Proceedings

Criminal Law - Identity Fraud and Theft - Personal Identifying Information and Penalties

This bill expands the definition of “personal identifying information” as it relates to identity fraud, increases the penalty for knowingly and willfully assuming the identity of another to avoid identification, apprehension or prosecution for a crime, and makes technical corrections to theft and identity fraud provisions.

Fiscal Summary

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

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s penalty provision.

Small Business Effect: None.

Analysis

Bill Summary: This bill alters terms and clarifies that theft or identity fraud committed under one scheme or a continuing course of conduct, whether from the same or several sources, may be charged as one crime. When a violation of the identity fraud provisions occurs, the value of the benefit, credit, good, service, or other thing of value may be aggregated to determine whether the crime is a felony or misdemeanor.

The bill expands the definition of “personal identifying information” to include, instead of being limited to, the enumerated items. The bill clarifies that a person who violates identity fraud provisions with intent to manufacture, distribute, or dispense another individual’s personal identifying information without the individual’s consent is guilty of a felony.

The bill increases the penalty for a person who knowingly and willfully assumes the identity of another to avoid identification, apprehension, or prosecution of a crime to up to five years imprisonment and/or a fine of \$25,000, and changes the offense from a misdemeanor to a felony.

Current Law: When a theft is committed under one scheme or a continuing course of conduct, whether from the same or several sources, the conduct may be considered as one crime. 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 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 who violates this identity fraud provision 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 \$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 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.

Notwithstanding any other provision of law, the State may institute a prosecution for the misdemeanor of identity fraud at any time. For purposes of the Maryland Constitution, a person convicted of the misdemeanor offense of identity fraud is deemed to have committed a misdemeanor whose punishment is confinement in the penitentiary and may reserve a point or question for *in banc* review as provided by the Maryland Constitution. A violator of any of these provisions is subject to a court order for restitution and paying costs, including reasonable attorney's fees, related to restoring a victim's identity. A sentence under the identity fraud provisions may be imposed separate from and consecutive to, or concurrent with, a sentence for any crime based on the acts establishing the violation.

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.

Background: This bill incorporates recommendations from the Committee to Revise Article 27 of the Annotated Code of Maryland – Crimes and Punishments and includes recommendations from the former Criminal Law Article Review Committee. The committee met during the 2004 interim.

The former Criminal Law Article Review Committee, which was charged with the nonsubstantive revision of the State's criminal law, identified various provisions that appeared to require substantive changes to the existing law. Based on these provisions of the article review committee identified by the term of art "flags" or questions to the General Assembly, the Article 27 committee recommends a series of substantive, yet largely clarifying changes to definitions in provisions dealing with identity fraud, as well as bribery of public officials, and extortion by government officers and employees.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities for longer periods of time 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 DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 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 DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 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 DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: None.

Cross File: HB 824 (Delegate Doory) (Committee to Revise Article 27 – Crimes and Punishments) – Judiciary.

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

Fiscal Note History: First Reader - February 15, 2005
ncs/jr

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