

Department of Legislative Services  
 Maryland General Assembly  
 2006 Session

FISCAL AND POLICY NOTE  
 Revised

House Bill 1201

(Delegate Zirkin, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law - Identity Theft Passports

This bill establishes an “identity theft passport” program that provides a card or certificate issued by the Attorney General verifying the identity of a person who is a victim of identity fraud.

This bill is contingent on the appropriation of sufficient funds in the fiscal 2008 State budget to carry out the required functions. If sufficient funds are not appropriated to the Office of the Attorney General in fiscal 2008, then the bill is automatically terminated.

Fiscal Summary

**State Effect:** General fund expenditures in the Office of the Attorney General could increase by \$97,200 in FY 2007 for additional personnel to process and issue identity theft passports. Out-years include annualization and inflation.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	97,200	120,000	126,800	134,100	142,000
Net Effect	(\$97,200)	(\$120,000)	(\$126,800)	(\$134,100)	(\$142,000)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** A person who knows or reasonably suspects that he/she is the victim of identity fraud and has filed a police report may apply for an identity theft passport through a law enforcement agency. The law enforcement agency must submit the application and a copy of the police report to the Attorney General for processing and the issuance of an identity theft passport. This bill authorizes the Attorney General, in cooperation with a law enforcement agency, to issue an identity theft passport to a person who is a victim of identity fraud. The Attorney General must complete a background check of the applicant before issuing the identity theft passport.

A person who is issued an identity theft passport may present the identity theft passport to a law enforcement agency to help prevent arrest or detention for an offense committed by another person using the passport owner's personal identifying information. A passport may also be presented to a creditor to aid the investigation of a fraudulent account that is opened in the passport owner's name or a fraudulent charge that is made against an account held by the passport owner.

The law enforcement agency or creditor has sole discretion to accept or reject an identity theft passport. In determining whether to accept or reject the passport, the law enforcement agency or creditor may consider the circumstances and available information regarding the offense of identity fraud against the passport owner.

An application for an identity theft passport and any supporting documentation is not a public record and may not be released, except to a law enforcement agency in this or another state. The Attorney General is required to adopt regulations to implement the provisions of the bill.

**Current Law:** A person who knows or reasonably suspects that he/she is the victim of identity fraud may contact a local law enforcement agency that has jurisdiction over any part of the county where the person lives or any part of the county in which the crime occurred. A local law enforcement agency must prepare and file a report of alleged identity fraud and provide a copy of the report to the victim.

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.

If the benefit, credit, good, service, or other thing that is the subject of the crime is valued at \$500 or more, then a person who violates this identity fraud provision is guilty of a felony and is subject to maximum penalties of imprisonment for five years and/or a fine of \$25,000. If the benefit or other thing has a value of less than \$500, or if a person knowingly and willfully assumes the identity of another to avoid identification, apprehension, or prosecution for a crime, then the violator is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for 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 up to \$25,000. 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. Under 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:** According to the National Conference of State Legislatures, identity theft passports were created by state legislators to document the innocence of identity theft victims. Generally, a passport applicant must submit a police report or a judicial expungement order to document the victimization. Seven states have enacted passport programs as of the end of calendar 2005. Virginia was the first state to enact a passport program in 2003. In 2004, Mississippi and Oklahoma enacted passport programs. Ohio enacted its program in 2005 and requires that a picture and fingerprints be included in the victim's record. Other states that enacted passport programs in 2005 were Arkansas, Montana, and Nevada.

The Identity Theft Data Clearinghouse, sponsored by the Federal Trade Commission (FTC) and the Consumer Sentinel, a consortium of national and international law enforcement and private security entities, released *National and State Trends in Fraud and Identity Theft* for calendar 2005. In calendar 2005, the FTC received 255,565 identity theft complaints. In calendar 2004, the number of identity theft complaints was 246,847.

In Maryland, residents reported 4,848 instances of identity theft in 2005, or 86.6 complaints per 100,000 population, ranking Maryland eleventh in the nation for identity theft. As has been the case for the last several years, the most common type of identity theft was credit card fraud, which comprised 31% of all complaints. The highest number of complaints came from the State's major urban areas: Baltimore City, Silver Spring, Hyattsville, Rockville, and Gaithersburg.

Chapters 241 and 242 of 2005 established a 21-member legislative task force on identity theft. To date, 14 of 21 members have been appointed. The task force is charged with studying the problems associated with identity theft in Maryland and the privacy laws in other states. The task force is required to consult with federal agencies, agencies in other states, and identity theft experts during its investigation. The task force must also complete a survey of State agencies to determine compliance with State and federal laws regarding collection and use of Social Security numbers. Findings and recommendations for possible remedies to identity theft must be submitted to the General Assembly by December 31, 2006.

**State Expenditures:** General fund expenditures in the Office of the Attorney General could increase by \$97,242 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one administrator and one administrative aide to process applications, complete background checks, draft

implementing regulations, and issue identity passports. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$84,272
Office Rent	2,475
Other Operating Expenses	<u>10,495</u>
<b>Total FY 2007 State Expenditures</b>	<b>\$97,242</b>

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Montgomery County, Prince George's County, Harford County, Queen Anne's County, St. Mary's County, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Attorney General, Carroll County, National Conference of State Legislatures, Department of Legislative Services

**Fiscal Note History:** First Reader - March 1, 2006  
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