

Department of Legislative Services  
 Maryland General Assembly  
 2006 Session

FISCAL AND POLICY NOTE

House Bill 1165  
 Judiciary

(Delegate Lee, *et al.*)

**Criminal Law - Identity Fraud Victims - Judicial Determinations of Innocence and Victim Database**

This bill provides for a person who is the subject of a criminal complaint as a result of identity theft to receive a judicial determination of factual innocence.

**Fiscal Summary**

**State Effect:** General fund expenditures could increase by \$361,900 in FY 2007 only to develop the required database. Potential significant increase in general fund expenditures for the Administrative Office of the Courts (AOC) to provide staff support, equipment, and supplies to process and track identity theft victims who receive judicial determinations of factual innocence and to provide additional trial and clerical time to address petitions or motions for these judicial determinations.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	361,900	-	-	-	-
Net Effect	(\$361,900)	\$0	\$0	\$0	\$0

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

**Local Effect:** Potential significant increase in expenditures to provide additional trial and clerical time necessary to address petitions or motions for judicial determinations of factual innocence and to track and provide information on court findings and identity theft victims who come before the courts.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** A person who learns or reasonably suspects that he/she has been the victim of identity fraud may petition the court, or the prosecuting State's Attorney may apply, for an expedited determination of factual innocence regarding the person's arrest detention, charge, or conviction for a criminal complaint or for the mistaken association of the person with a criminal record. A judicial determination of factual innocence may be heard and determined on declarations, affidavits, police reports, other relevant material or reliable information submitted by the parties or ordered to be part of the record by the court.

If the court determines that the petition or motion for factual innocence has merit and that there is no reasonable cause to believe that the victim committed the offense for which the victim was arrested, charged, convicted, or made the subject of a criminal complaint, then the court must issue an order certifying the determination of factual innocence. After the court has issued a determination of factual innocence, the court must provide written documentation of the order to the victim and may order the name and associated personal identifying information contained in court records, files, or indices that are accessible by the public to be deleted, sealed, or labeled to indicate that the data is impersonated.

A court that has issued a determination of factual innocence may vacate the determination at any time if the court finds that material misrepresentation or fraud is contained in the petition or information submitted to support the petition for factual innocence.

AOC is required to develop a form to issue a factual innocence order and must establish and maintain a database of persons who have been victimized by identity fraud and received a factual innocence determination. AOC must provide the victim or the victim's representative access to the database to establish that the victim suffered identity fraud. Access to the AOC database must be limited to the identity fraud victim, other persons authorized by the victim, and criminal justice agencies. A victim must submit a full set of fingerprints and any other information required by AOC to be included in the identity fraud database. AOC is required to verify the identity of the victim against a driver's license or other identification record maintained by the Motor Vehicle Administration (MVA). A toll-free number to provide access to the identity fraud database must also be established.

**Current Law:** 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 and willfully assume the identity of another to avoid identification, apprehension, or prosecution for a crime. 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.

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.

**Background:** Identity theft is commonly regarded as one of the fastest growing crimes in the United States. Thieves employ a variety of methods, including looking through dumpsters, watching people enter passwords, and "phishing" for personal information, over the telephone or via the Internet to siphon off the value of a person's good name and credit.

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.

All 50 states and the District of Columbia have provisions relating to identity theft. The federal Identity Theft and Assumption Deterrence Act of 1998 made 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. The federal Fair and Accurate Credit Transactions Act of 2003 provides additional deterrence to identity theft, but also contains preemptions of state authority relating to enforcement of identity theft provisions enacted after 2003.

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 and Local Fiscal Effect:** General fund expenditures could increase significantly in the Judiciary for additional staff to interact with alleged victims of identity theft who petition the courts for determinations of factual innocence. Additional personnel could also be needed to provide customer assistance via the required toll-free number and to contact the MVA to verify identities as required in the bill. Additional resources could be needed for additional trial and clerical time to consider petitions or motions for expedited judicial determinations of factual innocence. Additional resources would also be needed to store fingerprint and other identifying information.

AOC advises that \$361,920 in general funds (in fiscal 2007) only would be needed to set up a new stand-alone application to track petitions and motions for factual innocence and any judicial findings that occur pursuant to the petitions or motions. AOC further advises that if the Prince George's and Montgomery circuits and Baltimore City juvenile court, all of which maintain separate databases, are required to provide information to the AOC database, then programming costs could increase significantly.

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### **Additional Information**

**Prior Introductions:** This bill is similar to HB 1003 of 2004, which was heard in the House Judiciary Committee, but then withdrawn.

**Cross File:** None.

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

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