

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 386 (Delegate Petzold, *et al.*)
Judiciary

Crimes - Caregiver Convicted of Identity Fraud - Prohibition Against Contracting with Vulnerable Adult

This bill prohibits a person who has been convicted of identity fraud from entering into a service contract as a caregiver for a vulnerable adult. A person who violates this provision is guilty of a misdemeanor and is subject to a maximum fine of \$5,000 and/or imprisonment for up to 18 months. A contract between a person convicted of identity fraud and a vulnerable adult is voidable by the vulnerable adult.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provision.

Local Effect: Minimal increase in expenditures due to the bill's incarceration provision.

Small Business Effect: None.

Analysis

Current Law: A "caregiver" is a person who is under a duty to care for a vulnerable adult due to a contractual obligation. A "vulnerable adult" is an adult who lacks the physical or mental capacity to provide for his or her daily needs.

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 and/or a fine not exceeding \$25,000, 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: Privacy experts have long expressed concern over the susceptibility of certain populations, especially vulnerable adults and children, to this form of victimization. In calendar 2005, the Federal Trade Commission received 255,565 identity theft complaints. In calendar 2004, the number of identity theft complaints was 246,847. Out of the 239,277 identity theft victims from 2005 who disclosed their ages, 46,048 or 19.2% were ages 60 and over. 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 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 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 \$1,974 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 \$341 per month. Excluding medical care, the average variable costs total \$134 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 2007 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 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 2007.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, State Public Interest Research Group, National Conference of State Legislatures, Department of Legislative Services

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