

HOUSE BILL 917

D1
HB 1165/06 – JUD

71r1976

By: **Delegates Lee, Ali, Barkley, Bronrott, DeBoy, Dumais, Goldwater, Healey, Heller, Hixson, Hubbard, Impallaria, James, Jones, Kaiser, Krebs, Lawton, Manno, McComas, McDonough, Minnick, Mizeur, Montgomery, Nathan-Pulliam, Pendergrass, Ramirez, Robinson, Schuler, Shank, Shewell, Sophocleus, Stocksdale, F. Turner, Valderrama, Waldstreicher, and Walkup**

Introduced and read first time: February 9, 2007

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Identity Fraud Victims – Judicial Determinations of**
3 **Innocence and Victim Database**

4 FOR the purpose of authorizing a person who has learned or reasonably suspects that
5 the person has been the victim of identity fraud to petition a court on the motion
6 of the person or on application of a certain prosecuting attorney for an expedited
7 judicial determination of factual innocence with respect to certain offenses;
8 establishing that a certain judicial determination of factual innocence may be
9 heard and determined on certain evidence; requiring a court to make a certain
10 finding after making a certain determination; requiring the court to issue a
11 certain order certifying a certain determination; requiring the court to provide a
12 certain victim with certain written documentation of a certain order;
13 authorizing a court to order certain records, files, and indexes deleted, sealed, or
14 labeled in a certain manner under certain circumstances; authorizing the court
15 to vacate a certain order under certain circumstances; requiring the
16 Administrative Office of the Courts to develop a certain form; requiring the
17 Office to establish and maintain a certain database of certain victims of identity
18 fraud; requiring the Office to provide certain persons access to the database for
19 certain purposes; restricting access to a certain database; requiring a certain
20 identity fraud victim to submit a certain order, fingerprints, and other
21 information to the Office; requiring the Office to verify a certain identity in a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain manner; requiring the Office to establish and maintain a certain
2 toll-free telephone number; defining a certain term; and generally relating to
3 the establishment of an identity fraud victim database.

4 BY adding to
5 Article – Criminal Law
6 Section 8–306
7 Annotated Code of Maryland
8 (2002 Volume and 2006 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – Criminal Law**

12 **8–306.**

13 (A) IN THIS SECTION, “PROSECUTING ATTORNEY” HAS THE MEANING
14 STATED IN § 11–101 OF THE CRIMINAL PROCEDURE ARTICLE.

15 (B) (1) A PERSON WHO HAS LEARNED OR REASONABLY SUSPECTS
16 THAT THE PERSON HAS BEEN THE VICTIM OF IDENTITY FRAUD IN VIOLATION OF
17 THIS SUBTITLE MAY PETITION A COURT ON THE MOTION OF THE PERSON OR ON
18 APPLICATION OF A PROSECUTING ATTORNEY FOR AN EXPEDITED JUDICIAL
19 DETERMINATION OF FACTUAL INNOCENCE WITH RESPECT TO AN OFFENSE
20 DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION.

21 (2) A JUDICIAL DETERMINATION OF FACTUAL INNOCENCE MADE
22 UNDER THIS SECTION MAY BE HEARD AND DETERMINED ON DECLARATIONS,
23 AFFIDAVITS, POLICE REPORTS, OR OTHER RELEVANT MATERIAL AND RELIABLE
24 INFORMATION SUBMITTED BY THE PARTIES OR ORDERED TO BE PART OF THE
25 RECORD BY THE COURT.

26 (3) WHERE THE COURT DETERMINES THAT THE PETITION OR
27 MOTION IS MERITORIOUS AND THAT THERE IS NO REASONABLE CAUSE TO
28 BELIEVE THAT THE VICTIM COMMITTED THE OFFENSE FOR WHICH A
29 DEFENDANT WAS ARRESTED, CHARGED, CONVICTED, OR SUBJECT TO A
30 CRIMINAL COMPLAINT IN THE NAME OF THE VICTIM, OR THAT THE IDENTITY OF
31 THE VICTIM HAS BEEN MISTAKENLY ASSOCIATED WITH A RECORD OF CRIMINAL
32 CONVICTION, THE COURT SHALL FIND THE VICTIM FACTUALLY INNOCENT OF
33 THAT OFFENSE.

1 **(4) IF THE VICTIM IS FOUND FACTUALLY INNOCENT, THE COURT**
2 **SHALL ISSUE AN ORDER CERTIFYING THIS DETERMINATION.**

3 **(C) (1) AFTER A COURT HAS ISSUED A DETERMINATION OF FACTUAL**
4 **INNOCENCE UNDER THIS SECTION, THE COURT:**

5 **(I) SHALL PROVIDE THE VICTIM WRITTEN**
6 **DOCUMENTATION OF THE ORDER; AND**

7 **(II) MAY ORDER THE NAME AND ASSOCIATED PERSONAL**
8 **IDENTIFYING INFORMATION CONTAINED IN COURT RECORDS, FILES, AND**
9 **INDEXES ACCESSIBLE BY THE PUBLIC DELETED, SEALED, OR LABELED TO SHOW**
10 **THAT THE DATA IS IMPERSONATED AND DOES NOT REFLECT THE DEFENDANT'S**
11 **IDENTITY.**

12 **(2) A COURT THAT HAS ISSUED A DETERMINATION OF FACTUAL**
13 **INNOCENCE UNDER THIS SECTION MAY AT ANY TIME VACATE THAT**
14 **DETERMINATION IF THE PETITION OR INFORMATION SUBMITTED IN SUPPORT**
15 **OF THE PETITION IS FOUND TO CONTAIN MATERIAL MISREPRESENTATION OR**
16 **FRAUD.**

17 **(D) (1) THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL**
18 **DEVELOP A FORM FOR USE IN ISSUING AN ORDER UNDER THIS SECTION.**

19 **(2) THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL**
20 **ESTABLISH AND MAINTAIN A DATABASE OF PERSONS WHO HAVE BEEN VICTIMS**
21 **OF IDENTITY FRAUD AND HAVE RECEIVED DETERMINATIONS OF FACTUAL**
22 **INNOCENCE.**

23 **(3) THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL**
24 **PROVIDE A VICTIM OF IDENTITY FRAUD OR THE AUTHORIZED REPRESENTATIVE**
25 **OF THE VICTIM ACCESS TO THE DATABASE IN ORDER TO ESTABLISH THAT THE**
26 **VICTIM HAS BEEN A VICTIM OF IDENTITY FRAUD.**

27 **(4) ACCESS TO THE DATABASE SHALL BE LIMITED TO CRIMINAL**
28 **JUSTICE AGENCIES, THE IDENTITY FRAUD VICTIM, AND ANY OTHER PERSONS**
29 **AND AGENCIES AUTHORIZED BY THE VICTIM.**

1 **(5) IN ORDER FOR A VICTIM OF IDENTITY FRAUD TO BE**
2 **INCLUDED IN THE DATABASE ESTABLISHED UNDER THIS SUBSECTION, THE**
3 **IDENTITY FRAUD VICTIM SHALL SUBMIT TO THE ADMINISTRATIVE OFFICE OF**
4 **THE COURTS THE COURT ORDER, A FULL SET OF FINGERPRINTS, AND ANY**
5 **OTHER INFORMATION PRESCRIBED BY THE ADMINISTRATIVE OFFICE OF THE**
6 **COURTS.**

7 **(6) ON RECEIVING INFORMATION UNDER THIS SUBSECTION, THE**
8 **ADMINISTRATIVE OFFICE OF THE COURTS SHALL VERIFY THE IDENTITY OF THE**
9 **VICTIM AGAINST A DRIVER'S LICENSE OR OTHER IDENTIFICATION RECORD**
10 **MAINTAINED BY THE MOTOR VEHICLE ADMINISTRATION.**

11 **(E) THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL ESTABLISH**
12 **AND MAINTAIN A TOLL-FREE TELEPHONE NUMBER TO PROVIDE ACCESS TO**
13 **INFORMATION UNDER SUBSECTION (D) OF THIS SECTION.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2007.