

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 931
Judiciary

(Delegate Kipke, *et al.*)

Identity Fraud - Victim - Expungement of False Criminal Record

This bill allows a victim of identity theft to seek expungement of any police, court, or other record resulting from the arrest of another person unlawfully using the victim's name or identity. The court that orders the expungement must note in writing that the expungement was ordered because the person was a victim of identity theft.

The victim may request the Office of the Attorney General (OAG) to file the petition for expungement on the person's behalf. OAG must create a form available over the Internet for use by a person requesting expungement for this reason and may charge a fee not exceeding \$75 to process such an expungement request.

The court may order a person who pleads guilty or *nolo contendere*, or who is convicted of identity fraud in connection with the unauthorized use of a victim's name or identity, to make restitution to the victim for reasonable costs, including reasonable attorney's fees, incurred in connection with the expungement.

Fiscal Summary

State Effect: Any additional expungements could be processed by the Judiciary, the Department of Public Safety and Correctional Services (DPSCS), and the State Police with existing resources. Possible increase in general fund expenditures for new OAG staff to process expungement requests on behalf of victims. Minimal increase in general fund revenues from processing fees received by OAG and expungement fees charged by the Judiciary.

Local Effect: All local governments responding to a request for information about the bill advise that they could handle any additional expungements with existing resources.

Small Business Effect: None.

Analysis

Current Law: A person may not possess, obtain, or help another to possess or obtain the personal identifying information of another, without consent, to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value in the name of the individual. A person may not 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 avoid payment of a debt or other obligation.

The penalties for identity fraud vary depending on the nature of the offense:

- If the benefit, credit, goods, services, or thing of value has a value of \$500 or greater, the person is guilty of a felony and is subject to maximum penalties of five years imprisonment and/or a \$25,000 fine.
- If the benefit, credit, goods, services, or thing of value has a value of less than \$500, the person is guilty of a misdemeanor and is subject to maximum penalties of 18 months imprisonment and/or a \$5,000 fine.
- A person who is convicted of violation of this statute and the circumstances reasonably indicate that the person's intent was to manufacture, distribute, or dispense another's information without their consent is guilty of a felony and is subject to maximum penalties of five years imprisonment and/or a \$25,000 fine.
- 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 is subject to maximum penalties of 18 months imprisonment and/or a \$5,000 fine.

The values of the benefits, credit, goods, service, or other thing of value may be aggregated to determine whether the violation is a misdemeanor or felony if the violations are part of a continuing course of conduct or one scheme.

Chapter 607 of 2006 established an "identity theft passport" program that provides a card or certificate issued by the Attorney General verifying the identity of a victim of identity fraud to aid in creditor investigations and prevent wrongful police detention.

A person who has been charged with the commission of a crime may file a petition listing relevant facts for expungement of a police record, court record, or other record

maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, and gubernatorial pardon.

The State's Attorney is served with a copy of each petition for expungement. If the State's Attorney objects to the petition within 30 days, the court holds a hearing to determine whether the person is entitled to expungement.

A petition for expungement of court records costs \$30. "Expungement" with regard to a court record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; or
- if access to a court record or police record can be obtained only by reference to another court record or police record, by the expungement of that record, or the part of it that provides access.

A person is not entitled to expungement if the petition is based on any grounds other than an acquittal or dismissal of charges and the person has subsequently been convicted of a crime or is a defendant in a criminal proceeding.

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, the most recent date for which data was available. In calendar 2005, 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.

A Task Force to Study Identity Theft was created by Chapters 241 and 242 of 2005 to study the problems associated with identity theft in Maryland. Because appointments to the task force were not completed until August 2006, the task force had only met once as of its January 31, 2007 termination date. The task force submitted a report to the Governor and the General Assembly in December 2006 in which the task force recommended that legislation be enacted to authorize its continuation for an additional year. Emergency legislation extending the termination date of the task force to January 31, 2008 has been introduced in 2007 as HB 26 and SB 70.

State Effect: There were approximately 17,347 petitions for expungement filed in the District Court in fiscal 2004, compared with 1,185 charges of identity theft. A petition for expungement costs \$30. Also, DPSCS received approximately 18,888 requests for expungement in 2006. It is impossible to determine how many of these charges could lead to a petition for expungement as contemplated by this bill, *i.e.*, where the offense resulted in a criminal record in the victim's name. Any such increase, however, is expected to be minimal and any increase in District Court, DPSCS, or State Police workloads could be handled with existing resources. Any revenue increase from additional expungement fees is expected to be minimal.

Office of the Attorney General

Identity fraud victims can request OAG to file an expungement petition on their behalf, through a form available on the Internet. OAG can charge a fee of up to \$75 to process these requests. OAG advises that it will require an additional assistant Attorney General to file petitions and an additional administrator/inspect to conduct background investigations. The Department of Legislative Services disagrees with this assessment and believes that the number of requests will be small enough for OAG to process expungements with existing resources.

OAG currently administers the “identity theft passport” program. This program should both reduce the need for expungement requests under this bill and provide existing staff within OAG to process these requests. However, if the number of expungements requested under the bill is unexpectedly large, OAG could require additional staff.

General fund revenue is expected to increase by a minimal amount accounting for filing fees paid to OAG.

Additional Information

Prior Introductions: SB 123 of 2005, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Cross filed similar bills were introduced in 2004. HB 190 of 2004 received an unfavorable report in the House Judiciary Committee. SB 542 of 2004 was withdrawn before a hearing the Senate Judicial Proceeding Committee.

Cross File: None.

Information Source(s): Montgomery County, Prince George’s County, Charles County, Somerset County, Judiciary (Administrative Office of the Courts), Department of Natural Resources, Department of State Police, University System of Maryland, Maryland Department of Transportation, Office of the Attorney General, Department of Public Safety and Correctional Services, Department of Legislative Services

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