

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1109
Judiciary

(Delegate Lee, *et al.*)

Contents of Computer Database - Unauthorized Duplication and Possession

This bill establishes that it is a crime for a person to intentionally, willfully, and without authorization copy, attempt to copy, possess, or attempt to possess the contents of all or part of a computer database that was unlawfully accessed. A violator is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Current Law: A person may not intentionally, willfully, and without authorization access or attempt to access, cause to be accessed, or exceed authorized access to all or part of a computer network, language, software, system, services, or database. A violation of this provision is a misdemeanor and the violator is subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

A person may not commit unlawful access with the intent to cause the malfunction or interruption of any or all parts of a computer, network, language, software, services, or

data. A person may not commit authorized access with the intent to alter, damage, or destroy all or any part of data or program stored, maintained, or produced by a computer, network, software, system, services, or database. A person may not intentionally, willfully, and without authorization possess, identify, or attempt to identify a valid access code, or publicize or distribute a valid access code to an unauthorized person. If the aggregate amount of loss is \$10,000 or more, the violator is guilty of a felony and is subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000. If the aggregate loss is less than \$10,000, the violator is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for 5 years and/or a fine of \$5,000.

Access achieved in a prohibited manner under a single scheme or a continuing course of conduct may be considered one violation. A defendant may be tried in any county in Maryland where the act was performed or the accessed computer was located.

Background: The bill is recommended by the Baltimore City State's Attorney. In written testimony presented to the Task Force to Study Identity Theft, the State's Attorney informed the task force that identity thieves often hack into computer databases that store vast amounts of identity-related data. Under current law, the altering, damaging, and unauthorized access to a computer database is prohibited, but copying or possessing the data is not prohibited. Expanding the law to criminalize copying or possessing the contents of a database that was compromised by unauthorized access could aid law enforcement efforts to apprehend identity thieves.

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 *Identity Theft Victim Complaint Data* for calendar 2006 (the latest information available). In calendar 2006, FTC received 246,035 identity theft complaints. In calendar 2005, the number of identity theft complaints was 255,613.

In Maryland, residents reported 4,656 instances of identity theft in 2006, or 82.9 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 25% of all complaints. The second most prevalent type of identity fraud involved the opening of new accounts for wireless devices, utilities, and telephones, at 16% of all complaints.

In November 2007, FTC released a national survey, *The 2006 Identity Theft Survey Report*. FTC reports that the survey suggests that 8.5 million U.S. adults discovered that they were victimized by some form of identity theft in calendar 2005.

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 \$2,600 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 \$526 per month. Excluding medical care, the average variable costs total \$148 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 2009 are estimated to range from \$19 to \$71 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 \$40 to \$129 per inmate in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Attorney General (Consumer Protection), Department of Public Safety and Correctional Services, Department of Legislative Services

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