

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 566
Judiciary

(Delegate Kramer, *et al.*)

**Criminal Law - Identity Fraud and Credit Card Crimes Against the Elderly or
Persons with a Disability**

This bill prohibits a person from committing a credit card offense or identity fraud against a person who is at least age 68 or a “person with a disability.” A violator is guilty of a misdemeanor and subject to a maximum penalty of imprisonment not to exceed 50% of the maximum sentence provided for commission of the offense.

A conviction under these provisions does not merge with a conviction for the underlying offense upon which the violation is based. A sentence imposed under these provisions must be consecutive to and not concurrent with any other sentence imposed for any crime based on the act establishing the violation of these provisions.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill’s penalty provisions. Revenues are not affected.

Local Effect: Minimal increase in local expenditures due to the bill’s penalty provisions. Local revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: Except for certain sexual offenses where the specified age of a young victim is one of the elements of the crime, Maryland criminal law does not generally provide for criminal sanctions based on the age of the victim.

Fraudulently Procuring the Issuance of a Credit Card: A person may not make or cause to be made, directly or indirectly, a false statement in writing about the identity of him or herself or another person to procure the issuance of a credit card if the person knew the statement to be false and intended that the statement be considered reliable. A person who violates this section is guilty of a misdemeanor and subject to maximum penalties of 18 months imprisonment and/or a \$500 fine.

Credit Card Theft: Credit card theft generally involves taking a credit card from another person without the consent of the cardholder or receiving a credit card delivered by mistake or known to have been taken from a cardholder without the cardholder's consent, with the intent to use, sell, or transfer the card to someone other than the cardholder or the issuer. A person who violates this section is guilty of a misdemeanor and subject to maximum penalties of 18 months and/or a \$500 fine.

Obtaining Property by Counterfeiting, Theft, or Misrepresentation: This offense generally involves using a stolen credit card or a credit card known to be counterfeit for the purpose of obtaining goods, services, or anything of value. A person who represents that he/she is the cardholder without the consent of the holder or that he/she is the holder of a credit card when the card has not been issued is also guilty of this offense if the person did so with the intent to defraud another person or obtain something of value. The penalties for and classifications of this offense depend on the value of the property obtained by the commission of the crime. The penalties and classifications are listed below.

<u>Value of Property</u>	<u>Classification</u>	<u>Penalty</u>
\$100 or below	Misdemeanor	Imprisonment up to 90 days and/or a \$500 fine
Exceeds \$100 but does not exceed \$500	Misdemeanor	Imprisonment up to 18 months and/or a \$500 fine
Over \$500	Felony	Imprisonment up to 15 years and/or \$1,000 fine

Receiving Property by a Stolen, Counterfeit, or Misrepresented Credit Card: This offense involves receiving anything of value known to have been obtained through the use of a stolen or counterfeit credit card or a prohibited misrepresentation regarding the credit card. The penalties for and classifications of this offense are the same as those listed above for obtaining property by counterfeiting, theft, or misrepresentation.

Identity Fraud: 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 may not knowingly and willfully claim to represent another person without the knowledge and consent of that person, with the intent to solicit, request, or take any action to otherwise induce another person to provide personal identifying information or a payment device number.

If the benefit, credit, good, service, or other thing that is the subject of the crime is valued at \$500 or more, then a person who violates this identity fraud provision is guilty of a felony and is subject to maximum penalties of five years imprisonment and/or a fine of \$25,000. If the benefit or other thing has a value of less than \$500, or 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 18 months imprisonment 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 up to \$25,000. 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.

Background: 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 2007 (the latest information available). In calendar 2007, FTC received 258,427 identity theft complaints. In calendar 2006, the number of identity theft complaints was 246,124. In Maryland, residents reported 4,821 instances of identity theft in 2007, or 85.8 complaints per 100,000 population, ranking Maryland tenth 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 28% of all complaints.

The second most prevalent type of identity fraud involved the opening of new accounts for wireless devices, utilities and the telephone, at 19% 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 Expenditures: General fund expenditures increase minimally as a result of the bill's penalties due to people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people subject to incarceration for the 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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 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 2010 are estimated to range from \$23 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 Fiscal Effect: Expenditures increase minimally as a result of the bill's enhanced incarceration penalties. 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 \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: HB 873 of 2008, a similar bill, received an unfavorable report from the House Judiciary Committee. Its cross file, SB 501, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Department of Disabilities, Judiciary (Administrative Office of the Courts), Maryland Department of Aging, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Identity Theft Clearinghouse, Federal Trade Commission, Department of Legislative Services

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