

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 408
Judiciary

(Delegate McComas, *et al.*)

Judicial Proceedings

Criminal Law - Identity Fraud - Assumption of Identity of Fictitious Person

This bill prohibits a person from assuming the identity of a fictitious person (1) to avoid identification, apprehension, or prosecution for a crime; (2) with fraudulent intent to get a benefit, credit, good, service, or other thing of value; or (3) with fraudulent intent to avoid the payment of a debt or other legal obligation.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures from monetary penalties imposed in District Court cases and due to the bill's expansion of the number of defendants subject to current incarceration penalties.

Local Effect: Minimal increase in local revenues and expenditures from monetary penalties imposed in circuit court cases and due to the bill's expansion of the number of defendants subject to current incarceration penalties.

Small Business Effect: None.

Analysis

Current Law: 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 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.

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 15 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 15 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: In 2008, the Court of Appeals held that the prohibition on the assumption of the identity of another under § 8-301(c) of the Criminal Law Article is ambiguous as to whether "identity of another" includes the assumption of a fictitious identity. *Ishola v. State*, 404 Md. 155 (2008).

State Revenues: General fund revenues increase minimally from monetary penalties imposed in District Court cases.

State Expenditures: The Judiciary advises that it does not anticipate a significant fiscal or operational impact as a result of the bill. Legislative Services concurs with this assessment.

The Office of the Public Defender (OPD) advises that while it anticipates a fiscal impact from the bill as a result of increased caseloads, it does not have information on which to base an actual projection of the extent of the impact. Legislative Services disagrees with this assessment, since the bill merely adds the use of a fictitious identity to the current prohibition on assuming the identity of another, and individuals who face charges as a result of the bill are likely to face additional charges stemming from the same set of facts and events, which would make them OPD clients regardless of the bill's changes to current law. Thus, it is likely that OPD can handle any increase in caseload as a result of the bill with existing resources.

General fund expenditures increase minimally 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 \$2,920 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 about \$390 per month. Excluding all medical care, the average variable costs total \$170 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced 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 Revenues: Revenues increase minimally from monetary penalties imposed in circuit court cases.

Local Expenditures: Expenditures increase minimally as a result of the bill's expansion of the number of defendants subject to current incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: HB 1432 of 2010, as amended, passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 500 (Senator Getty) - Judicial Proceedings.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510