

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 50

(Senator Frosh)

Judicial Proceedings

Judiciary

**Crimes - Use of Personal Identifying Information or the Identity of Another -
Sexual Crimes**

This bill prohibits a person from using the “personal identifying information” or identity of an individual without consent to invite, encourage, or solicit another to commit a “sexual crime” against the individual. Under the bill, “sexual crime” is defined as an act that would constitute a violation of the State’s prohibitions on various sexual crimes, sexual abuse of a minor, visual surveillance with prurient intent, or various other acts, including human trafficking.

Violators are guilty of a felony, punishable by imprisonment for up to 20 years and/or a maximum fine of \$25,000.

Fiscal Summary

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

Local Effect: Minimal increase in local revenues from fines imposed in circuit court cases. Expenditures are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A State’s Attorney or the Attorney General may investigate and prosecute a violation of any crime based on the act establishing a violation of the bill’s provisions. If the Attorney General exercises his authority to investigate and prosecute

these violations, the Attorney General has all the powers and duties of a State's Attorney, including the use of a grand jury in any county or Baltimore City, to investigate and prosecute the violation. Notwithstanding any other provision of law, the prosecution of the offense created by the bill or any crime based on the act establishing that offense may be commenced in any county in which the victim resides or an element of the crime occurred.

Current Law: Under § 8-301 of the Criminal Law Article (identity fraud), "personal identifying information" includes a name, address, telephone number, driver's license number, Social Security number, place of employment, employee identification number, health insurance identification number, medical identification number, mother's maiden name, bank or other financial institution account number, date of birth, personal identification number, unique biometric data, including fingerprint, voice print, retina or iris image or other unique physical representation, digital signature, credit card number, or other payment device number.

The State's identity fraud statute contains several prohibitions, including the ones listed below. Penalties vary based on the value of the item that is the subject of the violation.

- 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, including a fictitious person, 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.

Background: While there are distinct advantages to the proliferation of the Internet and social media, it has also allowed individuals to engage in once unthinkable behavior under a cloak of anonymity.

In December 2009, Jebidiah James Stipe, a Wyoming native and U.S. Marine stationed in California, posed as his former girlfriend when he placed an advertisement (including a picture of his former girlfriend) on Craigslist seeking a "real aggressive man with no concern for women." Ty Oliver McDowell, 1 of the 161 people who had responded to

the advertisement, began to instant message with Stipe, who was still posing as his former girlfriend. Stipe provided McDowell with his former girlfriend's address, which he had obtained from her on the premise of sending her an engagement present.

On December 11, 2009, Ty Oliver McDowell broke into Stipe's former girlfriend's home in Casper, Wyoming and raped her at knifepoint. Stipe and McDowell were both sentenced to 60 years to life in prison after pleading guilty to numerous charges, including first-degree sexual assault, aggravated kidnapping, aggravated burglary, and conspiracy to commit first-degree sexual assault.

In 2009, Margery Tannenbaum posted a sexually suggestive advertisement about a 9-year-old girl after the girl argued with her daughter at school. According to news reports, the advertisement listed the girl's age as 21, and the girl's family received several harassing telephone calls from individuals interested in the advertisement who asked for the girl by name, including men seeking an escort service. Tannenbaum was charged with aggravated harassment and endangering the welfare of a minor. After pleading guilty to the charges in January 2011, Tannenbaum received probation and was ordered to undergo psychological counseling and perform community service.

In November 2013, a Missouri man was arrested after he allegedly took an 11-year-old female relative to meet someone who agreed to sexually assault the girl after responding to an online advertisement the man had posted. Law enforcement authorities were alerted after someone reported the advertisement as abuse. The man was arrested after bringing the girl to a meeting with an undercover police officer posing as an interested party.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional 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 State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 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 State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 per month.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, *Casper Star-Tribune*, *Los Angeles Times*, newsday.com, *Chicago Tribune*, CNN.com, CBS New York, *St. Louis Post-Dispatch*, Department of Legislative Services

Fiscal Note History: First Reader - January 27, 2014
mc/kdm

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