

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 529
Judiciary

(Delegate Clippinger)

Judicial Proceedings

Criminal Law - Identity Fraud - Name of the Individual

This bill expands the identity fraud statute by repealing the requirement that a person act *in the name of a victim* to unlawfully get a benefit, credit, good, service, or other thing of value in order to be guilty of the offense. Accordingly, a person is guilty of identity fraud if the person knowingly, willfully, and with fraudulent intent, possesses, obtains or helps another to possess or obtain, personal identifying information of an individual without that individual's consent for the purpose of getting a benefit, good, service, other thing of value, or access to health care or information, even if the person does not specifically act in the name of that individual.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from the expanded application of an existing monetary penalty. Minimal increase in general fund expenditures from the expanded application of existing incarceration penalties.

Local Effect: Minimal increase in local revenues from the expanded application of existing monetary penalties. Minimal increase in local expenditures from the expanded application of existing 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; 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.

In addition to other activities, the identity fraud statute prohibits a person from knowingly, willfully, and with fraudulent intent possessing, obtaining, or helping another to possess or obtain any individual's personal identifying information without the consent of that individual in order to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value or to access health information or health care *in the name of that individual*.

If the benefit, credit, good, service, health information, health care, 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, credit, good, service, health information, health care, or other thing that is the subject of the crime has a value of less than \$500, 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.

In addition to restitution under Title 11, Subtitle 6 of the Criminal Procedure Article, a court may order a person who pleads guilty or *nolo contendere* or who is found guilty of identity fraud to make restitution to the victim for reasonable costs, including reasonable attorney's fees, incurred (1) for clearing the victim's credit history or credit rating; (2) for clearing the victim's record or history related to health information or health care; and (3) in connection with a civil or administrative proceeding to satisfy a debt, lien, judgment, or other obligation of the victim that arose because of the identity fraud.

"Health information" means any information, whether oral or recorded in any form or medium that (1) is created or received by a health care provider, a health care carrier, a public health authority, an employer, a life insurer, a school or university, or a health care clearing house and (2) relates to the past, present, or future physical or mental health condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Background: According to the Maryland State Commission on Criminal Sentencing Policy, eight individuals were sentenced in the State's circuit courts during fiscal 2014 for the identity fraud offense amended by the bill.

State Revenues: General fund revenues increase minimally to the extent that the bill expands the application of existing monetary penalty provisions in cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally from the expanded application of existing incarceration penalties 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 identity fraud as a result of the bill 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 \$770 per month. Excluding all health care, the average variable costs total \$200 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had 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 the State 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 State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally to the extent that the bill expands the application of existing monetary penalty provisions in cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of an existing incarceration penalty. 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 the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 549 (Senator Lee) - Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Legislative Services

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min/kdm

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