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House Bill 6169 (Substitute H-1 as reported without amendment)
House Bill 6172 (as reported without amendment)
Sponsor: Representative William Van Regenmorter (H.B. 6169)
Representative Matt Milosch (H.B. 6172)
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 10-27-04

RATIONALE

Identity theft, which occurs when someone uses another's personal identifying information to commit fraud or other crimes, has been widely characterized as the fastest growing crime in the United States. According to a report of the Federal Trade Commission (FTC), it received 214,905 identity theft complaints in 2003, an increase from 161,836 complaints received in 2002 and 86,212 in 2001 ("National and State Trends in Fraud & Identity Theft, January-December 2003", FTC, January 22, 2004.) Of those identity theft complaints, 6,566 were from Michigan victims in 2003. The Michigan Penal Code prohibits a person from obtaining or attempting to obtain another person's personal identifying information with the intent to use that information unlawfully, without the other person's authorization, for the purpose of obtaining financial credit, buying or otherwise obtaining real or personal property, obtaining employment, obtaining access to medical records, or committing any illegal act. Many people believe that Michigan law should include more comprehensive protections against identity theft (described in BACKGROUND, below). As part of that broader approach, it has been suggested that sentencing guidelines should be adjusted and that the period during which a prosecution may be commenced should be extended until the violator has been identified.

CONTENT

House Bills 6169 (H-1) and 6172 would amend the Code of Criminal Procedure to include identity theft violations in the

sentencing guidelines and extend the period of limitations for filing identity theft charges when evidence was obtained but the identity of the offender was not known. The bills would take effect on March 1, 2005.

House Bill 6169 (H-1)

The bill would include in the sentencing guidelines both identity theft and obtaining, possessing, selling, or transferring another person's personal identifying information or falsifying a police report with intent to commit identity theft. Each offense would be categorized as a Class E felony against the public order, with a statutory maximum penalty of five years' imprisonment. (The violations are included in the "Identity Theft Protection Act", proposed by Senate Bill 792 and House Bill 6168.)

The bill also would delete from the sentencing guidelines the offense of obtaining personal information without authorization (which the Identity Theft Protection Act would repeal). That offense is a Class E property felony, with a statutory maximum penalty of five years' imprisonment.

House Bill 6172

Under the Code of Criminal Procedure, an indictment must be found and filed within six years after an offense is committed (except as provided for particular offenses). The bill specifies that an indictment for identity theft or attempted identity theft could be found and filed within six years

after the offense was committed. If evidence of an identity theft violation were obtained and the individual who committed the offense had not been identified, however, an indictment could be found and filed at any time after the offense was committed, but not more than six years after the individual was identified. ("Identity theft" would mean conduct prohibited under the proposed Identity Theft Protection Act or the offense of obtaining personal information without authorization. "Identified" would mean that the individual's legal name was known.)

The bill also specifies that this extension or tolling of the limitations period would apply to any of the violations for which the limitations period had not expired at the time the extension or tolling took effect.

MCL 777.14h & 777.16o (H.B. 6169)
767.24 (H.B. 6172)

BACKGROUND

In December 2003, the Senate passed a number of bills aimed at protecting people against identity theft (Senate Bills 220, 657, 792 through 795, 797, 798, and 803). Later, Senate Bill 1384 was added to that package. Among other things, the legislation would create the "Identity Theft Protection Act" (Senate Bill 792); create the "Social Security Number Privacy Act" (Senate Bill 795); include a violation of the proposed Identity Theft Protection Act in the sentencing guidelines (Senate Bill 797); and extend the period of limitations for an identity theft prosecution, when a previously unidentified person who provided evidence was identified (Senate Bill 803). (A detailed analysis of these proposals is available on the Senate Fiscal Agency website: www.senate.michigan.gov/sfa.)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Under the statute of limitations in the Code of Criminal Procedure, a prosecutor generally must file an indictment within six years after an offense is committed. An

identity theft violation may not be discovered until long after the offense actually was committed, however, and even then the true identity of the person who committed the identity theft might not be readily known. With unknown suspects, it could be difficult or even impossible to prosecute an identity theft violation within six years after the crime was committed. House Bill 6172 would alleviate this problem by allowing identity theft to be prosecuted at any time after the offense was committed, but not more than six years after the individual who committed the offense was identified.

Supporting Argument

The Identity Theft Protection Act, as proposed by Senate Bill 792 and House Bill 6168, would repeal the current prohibition against using another individual's personal identifying information with the intent to use it unlawfully for the purpose of obtaining credit, buying or acquiring property, obtaining employment, gaining access to medical records, or committing any illegal act. The proposed Act instead would prohibit other similar actions. House Bill 6169 (H-1) would amend the sentencing guidelines to reflect those new violations.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 6169 (H-1)

The bill would have an indeterminate fiscal impact on State and local government. The proposed felonies of identity theft and obtaining, possessing, selling, or transferring another person's personal identifying information or falsifying a police report with intent to commit identity theft, would replace the existing felony of obtaining personal identifying information without authorization and with intent to use the information unlawfully. According to the Department of Corrections Statistical Report, in 2001 seven people were convicted of that offense. Of those, one offender received incarceration in a State prison, one received incarceration in a local jail, and five received probation. Local units pay for incarceration in local facilities, the cost of which varies by county. The State incurs the cost of felony probation at an average annual cost of

\$1,800, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. If one assumes that the number of offenders and types of sentences received for the proposed offenses would be similar to those for the existing offense, the change would have no fiscal impact.

House Bill 6172

The bill would have an indeterminate fiscal impact on State and local government. By extending the period for filing an indictment to six years after the identification of an offender, the bill could increase local court costs and both local and State corrections costs to the extent that it would allow additional identity theft cases to be prosecuted.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.