

HOUSE BILL REPORT

HB 1597

As Reported By House Committee On:

Criminal Justice & Corrections

Title: An act relating to identity theft.

Brief Description: Penalizing identity theft.

Sponsors: Representatives Cairnes, O'Brien, Ballasiotes, Cooper, D. Schmidt, Ruderman, Hatfield, Wensman, Thomas, Keiser, Sullivan, DeBolt, Talcott, Barlean, Bush, Benson, Santos, Quall, Campbell and Lambert.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/12/99, 2/17/99 [DPS].

Brief Summary of Substitute Bill

- Changes the name of the crime of criminal impersonation to identity theft, and increases the penalties.
- Provides for three degrees of the crime: first degree as a class B felony, second degree as a class C felony, and third degree as a gross misdemeanor.
- Makes changes to the elements of the crime of criminal impersonation in the first degree.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Jean Ann Quinn (786-7310).

Background:

A person commits the crime of criminal impersonation in the first degree in one of two ways: (1) by assuming a false identity, and doing some act using that false identity with the intent to defraud another person or for some other unlawful purpose; or (2) by pretending to be a representative of some person or organization or a public servant and doing some act in this pretend capacity with the intent to defraud another person. Criminal impersonation in the first degree is a gross misdemeanor.

A person commits the crime of criminal impersonation in the second degree by claiming to be, or creating an impression that he or she is, a law enforcement officer, and doing some act with the intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer. Criminal impersonation in the second degree is a misdemeanor.

Summary of Substitute Bill:

The crime of criminal impersonation is renamed "identity theft" and the following changes are made:

(1) Identity theft in the first degree is changed to a class B felony, ranked seriousness level IV, and is committed if a person assumes a false identity and does an act in his or her assumed character with the intent to commit a felony or third degree theft. (The elements for committing the crime by pretending to be a representative of some person or organization have not changed).

(2) The elements of identity theft in the second degree are identical to the existing crime of criminal impersonation in the second degree, but the crime is reclassified as a class C felony, ranked seriousness level III.

(3) Identity theft in the third degree is created as a gross misdemeanor. A person commits identity theft in the third degree by knowingly obtaining or possessing, without lawful authority, the identification card of another or a false identification card with the intent to commit, or to aid or abet, any unlawful activity. A person who possesses two or more identification cards of another person or two or more false identification cards is presumed to have acted with the intent to commit unlawful activity. This presumption can be rebutted by evidence raising a reasonable inference that possession of the false identification cards was not for the purpose of committing, or aiding or abetting, unlawful activity.

The term identification card is defined to mean a driver's license, instruction permit or identification card issued by any state or province of Canada, an "identocard" issued by the Department of Licensing, a passport, a United States Armed Forces or Merchant Marine identification card, a liquor control authority identification card of any state or province of Canada, a Social Security card, or a birth certificate.

Substitute Bill Compared to Original Bill:

The substitute bill restricts first degree identity theft to those instances in which a person does some act using the assumed identity with the intent to commit a felony or gross misdemeanor theft. In the original bill, the crime could be committed by using the assumed identity with the intent to commit any unlawful act. The presumption contained in third degree identity theft can, under the substitute bill, be rebutted by evidence raising a reasonable inference that possession of the false identification cards was not for the purpose of committing, or aiding or abetting, unlawful activity. The definition of identification card is expanded to include a birth certificate.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) Identity crimes have increased tremendously, particularly in Washington. It is devastating to the people who have had their identities stolen, and takes hours and hours of effort to even try to undo some of the damage caused by this. The police are not interested in prosecuting for the forgery of each individual check since they are often small individual amounts and generally no one has witnessed the person actually signing the checks. Coordinating the investigation of these crimes is also impossible because they cross over the jurisdictions of many different law enforcement agencies. Additionally, it is the merchant or financial institution who is considered the victim of the crime of fraud or forgery, not the person who has had their identity stolen. Criminal organizations are coming into Washington to commit these crimes because they know the penalties are not serious. This bill would deter criminals, give the police real tools to fight the crime, and recognize the true victims as the real victims. The bill should be as broad as possible to cover all the potential scenarios that can happen when someone has their identity stolen. The definition of identification card should also be amended to include Social Security numbers, checks, and credit cards.

Testimony Against: (Original bill) Section 5 of the bill establishing the new gross misdemeanor crime of identity theft in the third degree creates a presumption of guilt based on possession alone. This could cause appellate, as well as real life problems, and will result in unintended consequences. The problem with stolen checks is already encompassed under existing statutes, such as possession of stolen property, theft, and forgery. By raising the penalties so high, the Legislature is inappropriately making identity theft equivalent to second degree assault and second degree arson. Also, the person committing the crime will not be able to get drug treatment, and this is often the underlying problem.

Testified: (In support) Eileen Stauss, victim of identity theft; and Jeff Early, Tukwila Police.

(Opposed) Eric Lindell, Washington Association of Criminal Defense Lawyers.