
**Criminal Justice & Corrections
Committee**

HB 1966

Brief Description: Classifying identity theft as a crime against persons.

Sponsors: Representatives Ericks, O'Brien, Lovick, Strow, Haler, Takko, Morrell, Nixon, Campbell, McIntire, Conway, Santos, Chase and Moeller.

Brief Summary of Bill

- Adds identity theft in the first and second degree to the list of designated "crimes against persons" within the prosecuting standards and guidelines section of the Sentencing Reform Act.

Hearing Date: 2/24/05

Staff: Kathryn Leathers (786-7114).

Background:

In general, crimes are classified by statute as felonies, misdemeanors and gross misdemeanors. Felonies are further classified by statute as class A, class B or class C felonies, and these designations determine imprisonment and monetary penalties. If an act is prohibited by statute but no penalty for the violation is specifically imposed, the crime is deemed a misdemeanor.

Crimes may be further designated by statute as crimes against persons or crimes against property. If a crime is designated as a crime against persons, additional restrictions may be imposed on the convicted person at sentencing. Such restrictions include that the convicted person cannot have his or her record of conviction cleared, may be subject to community placement or community custody, and cannot qualify to earn up to 50 percent of earned release time.

Identity theft in the first degree is a class B felony, seriousness level of IV. Identity theft in the first degree is committed when a person knowingly:

- obtains, possesses, uses, or transfers a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime; and
- obtains an aggregate total of credit, money, goods, services, or anything else of value in excess of \$1,500 in value.

Identity theft in the second degree is a class C felony, seriousness level of II. Identity theft in the second degree is committed when a person knowingly:

- obtains, possesses, uses, or transfers a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime; and
- obtains an aggregate total of credit, money, goods, services, or anything else of value of less than \$1,500; or
- when no credit, money, goods, services, or anything of value is obtained.

Identity theft in the first or second degree is not designated by statute as either a crime against persons or a property crime.

Identity theft is not committed when a person obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.

The Sentencing Reform Act (SRA) includes guidelines for prosecutors to use when determining whether or not to prosecute a felony. The guidelines distinguish between two categories of crimes: crimes against persons and crimes against property/other crimes. Specific crimes are listed under each category of crimes. For example, the guidelines include the following crimes in the crimes against persons category: murder, assault, rape, first and second degree robbery, first degree arson, first and second degree extortion, and stalking. The crimes against property/other crimes category includes such crimes as: first and second degree theft, first and second degree possession of stolen property, first and second degree malicious mischief, and escape from community custody.

Under these guidelines, a prosecuting attorney may decline to prosecute any crime, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law. Additional guidelines are provided regarding the decision to file and prosecute a crime. For example:

- crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder; and
- property crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

The courts have ruled that the SRA's prosecuting guidelines are merely a set of guidelines for purposes of making felony filing and prosecuting decisions, and that the guidelines do not establish whether a specific crime is, in fact, a crime against persons or a crime against property. If a crime is not designated by statute as either a crime against persons or a property crime, the courts will conduct this independent analysis on a case-by-case basis.

Summary of Bill:

Identity theft in the first and second degree are categorized as "crimes against persons" within the prosecuting standards and guidelines section of the SRA.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.