



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 221

(Patron – Stolle)

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LD #: 02-4281536

Topic: Offenses involving telecommunication devices

Proposed Change:

Amends §§18.2-187.1, 18.2-190.1 through 18.2-190.4, and adds §§18.2-190.5 through 18.2-190.9, relating to offenses involving telecommunication devices. The proposed §18.2-187.1 would make it a crime for any person to fraudulently obtain or attempt to obtain telecommunication service by the use of false information or a false application for service, or by any other method. If the value of the service or benefit procured is \$200 or more, the offender shall be guilty of a Class 6 felony; if the value is less than \$200, the offense shall be a Class 1 misdemeanor. Any person convicted of a second or subsequent violation of this section or a similar law of any other state shall be guilty of a Class 5 felony. Paragraph E of the proposed §18.2-187.1 sets conditions for the award of compensatory damages to any service provider or party aggrieved by a violation of this section. These may include the actual damages suffered plus any profits of the violator attributable to the violation, or an award of statutory damages for each violation involved in the action, in a sum of not less than \$250 or more than \$10,000. In cases involving the use of an unlawful telecommunication device, each device shall be considered a separate violation.

The proposed §18.2-190.1 expands the definition of “equipment or materials used to manufacture an unlawful telecommunication device” to include any part, accessory or component used in the manufacture of such a device. “Manufacture of an unlawful telecommunication device” means to make, produce or assemble a device capable of performing any of the illegal functions of an unlawful telecommunication device. The sale of an unlawful telecommunication device would also include leasing such a device. The definition of “telecommunication device” is expanded to include any type of instrument or component capable of facilitating the transmission, decryption, encryption, acquisition, or reception of telecommunication services. “Telecommunication service” means any service provided for compensation to facilitate the lawful transmission or reception of signs, signals, writings, images and sounds through the use of a telecommunication device. A “telecommunication service provider” is any person or entity providing any telecommunication service. An “unlawful telecommunication device” is any device capable of facilitating the disruption or unauthorized receipt of a telecommunication service without the actual consent or knowledge of the telecommunication service provider.

The proposed §18.2-190.2 provides that a telecommunication equipment manufacturer may be in possession of an unlawful telecommunication device or materials used to manufacture such a device only if acting lawfully. Revisions to §§18.2-190.3 and 18.2-190.4 limit application of

these statutes to persons who “knowingly” sells or manufactures an unlawful telecommunication device or equipment used to manufacture such a device. Enhanced penalties for multiple devices and second or subsequent violations are described in §18.2-190.5. Any person convicted of the possession, sale, manufacture or distribution of three or more unlawful communication devices is guilty of a Class 5 felony. Any person convicted previously of a violation of this section or convicted previously of any similar crime is guilty of a Class 5 felony. For purposes of imposing criminal penalties for violations of §§18.2-190.3 and 18.2-190.4, the commission of the prohibited activity regarding each unlawful telecommunication device shall be deemed a separate offense. Under the proposed §18.2-190.7, the court may require a person convicted of violating §§18.2-190.3 or 18.2-190.4 to make restitution as provided for in §19.2-305.1. According to the proposed §18.2-190.8, any unlawful telecommunication device possessed, manufactured or sold in violation of §§18.2-190.2, 18.2-190.3 or 18.2-190.4 may be seized and forfeited to the Commonwealth. The proposed §18.2-190.9 provides for civil relief, including the award of compensatory damages in the same manner as described under the proposed §18.2-187.1, to any telecommunication service provider aggrieved by a violation of this article.

Current Practice:

Currently under §18.2-187.1, it is unlawful for any person to fraudulently obtain for himself or another, oil, electric, gas, water, telephone, telegraph or cable television service by the use of false information or a false application for service. It is also unlawful for any person to obtain telecommunication service as defined in §18.2-190.1 by the use of an unlawful telecommunication device. A violation of this section is punishable as a Class 6 felony if the value of service or benefit procured is \$200 or more; otherwise, the violation is a Class 1 misdemeanor. Currently, there are no increased penalties for offenses involving second or subsequent violations of this section.

Prior to 1998, the possession, sale or manufacture of an unlawful telecommunication device in violation of §§18.2-190.2 through 18.2-190.4 was punishable as a Class 1 misdemeanor. The possession, sale or manufacture of five or more unlawful telecommunication devices, however, was punishable as a Class 6 felony. During the 1998 legislative session, the General Assembly passed legislation effective July 1, 1998, to make the possession, sale or manufacture of any unlawful telecommunication device a Class 6 felony. Currently, there are no enhanced penalties for offenses involving multiple devices or subsequent violations.

Based on CY1999 and CY2000 Pre/Post-Sentence Investigation (PSI) data, 16 offenders were convicted of felony violations of §18.2-187.1 as the primary offense. Five of those convicted (31%) received a state-responsible (prison) term, with a median sentence of 1.2 years (*Background Sentencing Information* below). Three offenders (19%) received a local-responsible (jail) term, with a median sentence of six months. The remaining eight offenders (50%) were sentenced to no incarceration. There were no convictions for felony violations of §§18.2-190.2 through 18.2-190.4 in the PSI data.

Based on FY2001 Local Inmate Data System (LIDS) data, six offenders held pre- or post-trial in jail were convicted for misdemeanor violations of §18.2-187.1. Two offenders (33%) were sentenced to no incarceration, while the remaining four offenders (67%) received local-responsible (jail) terms, with a median sentence of 4.5 months.

Felony violations of §18.2-187.1 are covered by the sentencing guidelines. Misdemeanor convictions under §18.2-187.1 and felony convictions under §§18.2-190.1 through 18.2-190.4 are not covered by the guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Background Sentencing Information

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Utilities fraud, \$200 or more (§18.2-187.1)	16	50%	19%	31%	1.2 yrs.

Data Source: CY1999 and CY2000 Pre/Post-Sentence Investigation (PSI) database

Misdemeanor Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence
Utilities fraud, less than \$200 (§18.2-187.1)	6	33%	67%	0%	4.5 months

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.

Data Source: FY2001 Local Inmate Data System (LIDS) database

Impact of Proposed Legislation:

The proposed legislation creates expands and clarifies the definitions of existing crimes, and increases penalties for offenses involving multiple devices or subsequent violations. It also specifies that each violation regarding a separate unlawful telecommunication device would constitute a separate offense. The proposal establishes conditions for forfeiture of unlawful devices, restitution, and the awarding of compensatory damages to aggrieved parties. Application of sentences for similar crimes indicates that the proposal would increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, a conservative estimate of the net high state-responsible impact would be three beds, or \$70,398.

No adjustment to the sentencing guidelines would be necessary under the proposal.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY03	FY04	FY05	FY06	FY07	FY08
1	2	3	3	3	3

Pursuant to §30-19.1:4, the estimated amount of the necessary appropriation is \$70,398 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on §53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2001.
2. New cases representing local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the PSI database.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2002, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2000. For non-violent offenses, this rate was 9.5%.
3. No impact was assumed for persons sentenced under current felony provisions because there were no convictions found in CY1999 and CY2000 PSI database for §§18.2-190.2 through 18.2-190.4 and none of the offenders convictions under §18.2-187.1 were sentenced at or near the statutory maximum for the crime. Sentences for persons currently convicted of misdemeanor crimes whose crime would be a felony under the proposed legislation were randomly drawn from sentences for persons convicted of a Class 5 felony under §18.2-188 (false statement to obtain hotel or motel services valued at \$200 or more).