



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 221 **Amendment in the Nature of a Substitute** *(Patron Prior to Substitute – Stolle)*

Date Submitted: 01/30/02

LD #: 02-4726536

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 18.2-190.8, 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. 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” sell or manufacture an unlawful telecommunication

device or equipment used to manufacture such a device. 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 §18.2-190.6, 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 §18.2-190.7, 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 §18.2-190.8 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.

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.

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 revises, expands and clarifies the definitions of existing crimes. It also specifies that each violation regarding a separate unlawful telecommunication device would constitute a separate offense. The new elements may result in an impact on state-responsible (prison) bed space; however, data available to the Commission is insufficient to determine how many cases, if any, would be affected.

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

Pursuant to §30-19.1:4, the estimated amount of the necessary appropriation cannot be determined 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.