



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2061

Amendment in the Nature of a Substitute

(Patrons Prior to Substitute – Dudley and Byron)

Date Submitted: 1/16/03

LD #: 03-8894740

Topic: Unlawful use of personal identifying information

Proposed Change:

The proposal amends § 18.2-186.3 to explicitly prohibit the fraudulent use of the identifying information of deceased persons in an attempt to avoid summons, arrest, prosecution or to impede a criminal investigation. In addition, the court may order restitution be paid to the estate of the deceased. As currently written, § 18.2-186.3 does not explicitly protect deceased persons or their estate from identity fraud, nor does it provide for restitution in such cases.

Violation of § 18.2-186.3 is punishable as a Class 1 misdemeanor. If the violation results in a financial loss of more than \$200, violation is punishable as a Class 6 felony. A second or subsequent violation, as well as any violation that results in the arrest or detention of the victim of identity theft, is also punishable as a Class 6 felony.

Current Practice:

Based on FY2001 and FY2002 Local Inmate Data System (LIDS) data, 354 offenders held pre- or post-trial were convicted of a misdemeanor under § 18.2-186.3 (see *Background Sentencing Information* below). Most (78.2%) received a jail sentence with a median sentence of one month. Two offenders, convicted of additional charges, received a state-responsible (prison) sentence.

Background Sentencing Information

Misdemeanor Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Jail Sentence
Obtain identifying information with intent to defraud	354	21.2%	78.2%	.6%	1 mo.

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

Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Prison Sentence
Use of identifying information to defraud, financial loss greater than \$200	10	30%	40%	30%	2.3 yrs.

Data Source: FY2001 Pre/Post-Sentence Investigation (PSI) database.

Based on FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 10 were convicted of a felony under § 18.2-186.3 for using identifying information to defraud and causing a financial loss of greater than \$200 (see *Background Sentencing Information* above). Of these, three were sentenced to probation, four to a local-responsible (jail) term, and three were sentenced to a state-responsible (prison) term with a median sentence of 2.3 years. There was one conviction for using identifying information that resulted in detention of the victim of the identity fraud. That offender in that case did not receive an incarceration term. No second or subsequent cases of obtaining information with intent to defraud (Class 6 felony) were found in the PSI data.

Convictions §18.2-186.3 are not covered by the sentencing guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Impact of Proposed Legislation:

By expanding potential victims to include deceased persons, the proposed changes to § 18.2-186.3 may result in an increase in the number of offenders convicted of a Class 1 misdemeanor or a Class 6 felony under this statute. However, criminal justice databases available to the Commission do not contain information on the number of incidences that may be affected by the proposal. Therefore, the magnitude of the expected impact cannot be computed from existing data sources. Similarly, the impact on jails and community corrections cannot be quantified.

If there is an impact on state-responsible bed space, there will be a partially offsetting impact on local-responsible (jail) bed space. The state's share for a jail inmate is about half (52%) of the cost for a prison inmate for the same length sentence. However, the sentences for felony offenses tend to be longer than for misdemeanor offenses.

The anticipated impact on community corrections programs is expected to be twofold. First, there should be a shift from local to state-funded programs. And second, on average, the need for a program placement will be delayed by about two months (the difference in time actually served for the current misdemeanor versus the time estimated to be served under the proposed felony). A third factor may impact on community corrections programs; that is, the supervision for a felony crime may be longer than for the comparable crime when it was defined as a misdemeanor.

Additionally, there may be an increased need for prison or jail bed space based on probation or post-release supervision revocations. A judge can impose and suspend more time for a felony than a misdemeanor, and, consequently, if an offender violates release conditions, the potential amount of time that a judge may re-impose for a revocation is longer as well.

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 \$0 for periods of commitment to the custody of the Department of Juvenile Justice.