Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1135

(Patron – Norment)

Date Submitted: 1/6/03 **LD #: 03-8874253**

Topic: Money laundering

Proposed Change:
This proposal amends §§ 18.2-246.2 and 18.2-246.4 of the Virginia Comprehensive Money Laundering Act and adds § 19.2-10.1 providing for disclosure of records concerning banking and credit cards. The proposed § 18.2-246.2 defines credit cards and debit cards as "monetary instruments" and specifies that a "person" may include any individual, partnership, association, corporation or joint venture. The proposed § 18.2-246.4 provides for the lawful seizure of all money or other property traceable to the laundering of proceeds of some form of felonious activity under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States. Also, the provision that property cannot be seized unless the minimum prescribed punishment for the violation is a term of imprisonment not less than five years is eliminated.

The proposed § 19.2-10.1 describes procedures for the disclosure of records relevant to a criminal investigation by a financial institution or a credit card issuer. In order to obtain such records, a law-enforcement official must provide a statement of the facts documenting their relevance to the attorney for the Commonwealth. If the attorney for the Commonwealth determines that there is probable cause for the issuance of a *subpoena duces tecum*, he or she shall submit to the circuit court a draft order for the release of the information. The court may then issue such a subpoena only if there is probable cause to believe the records or other information sought are relevant to a legitimate law-enforcement inquiry. The court may issue the requested subpoena regardless of whether any criminal charges have been filed.

Currently, under Subsection A of § 18.2-246.3, the laundering of proceeds of a felonious activity is a felony punishable by imprisonment of not more than forty years or a fine of not more than $500,000 or both. Under Subsection B of § 18.2-246.3, any person who, for compensation, converts cash into negotiable instruments or electronic funds for another, knowing the cash is the proceeds of some form of felonious activity, is guilty of a Class 1 misdemeanor, and any second or subsequent violation of this subsection is punishable as a Class 6 felony. The current § 18.2-246.2 does not include credit cards and debit cards in the list of objects defined as "monetary instruments." The current § 18.2-246.4 provides for the lawful seizure of all money or other property traceable to the laundering of proceeds of some form of felonious activity under the laws of the Commonwealth. It also stipulates that property cannot be seized unless the minimum prescribed punishment for the violation is a term of imprisonment not less than five years.

Current Practice:
According to the fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database, there were two felony convictions for money laundering under § 18.2-246.3(A) as the primary (most serious) offense. One offender received a local-responsible (jail) sentence of twelve months and the other received a state-responsible (prison) sentence of four years. No felony convictions for laundering the money of another under § 18.2-246.3(B) were found in the FY2000 and FY2001 PSI database and no misdemeanor convictions under this provision were observed in the FY2001 and FY2002 Local Inmate Data System (LIDS) database.

Convictions under § 18.2-246.3 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:
The proposal may have an impact on the need for state-responsible (prison) bed space, but this impact cannot be determined with existing data. The potential increase in money laundering convictions due to the proposed changes to §§ 18.2-246.2 and 18.2-246.4 cannot be quantified. Criminal justice databases available to the Commission do not contain sufficient detail regarding the number of incidences that may be affected by the proposal. Furthermore, the impact on actual sentences cannot be calculated, since a judge may suspend all or part of the sentences imposed for these crimes or set the sentences to run concurrently with sentences for other offenses. The amount and value of property subject to seizure may well increase if the clause stipulating a minimum five year term of imprisonment is eliminated, but again, this increase cannot be accurately quantified.

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.

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