



## Impact Analysis on Proposed Legislation

*Virginia Criminal Sentencing Commission*

### **Senate Bill No. 979** **Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – Mims)**

**Date Submitted:** 01/23/03

**LD #:** 03-0641500

**Topic:** Unlawful use of personal identifying information

#### **Proposed Change:**

The proposal amends §§ 2.2-3800, 17.1-227, 18.2-186.3, 18.2-204.1, and 42.1-82 and adds §§ 18.2-186.3:1 and 18.2-186.3:2 to achieve the following:

- Prohibit agencies from displaying the social security number of a data subject on a student or employee identification card;
- Prohibit state agencies from delivering or causing delivery of an envelope or package upon which a social security number is visible;
- Permit a clerk of the court to refuse any instrument for recording that includes a grantor's, grantee's or trustee's social security number;
- Expand identity fraud provisions to include acts in which a person obtains identifying information while impersonating a law-enforcement officer or an official of the Commonwealth;
- Allow a judge to order an offender found guilty of identity fraud to pay restitution to a person's estate, should the person whose identifying information was unlawfully used be deceased;
- Establish provisions for a person who believes that he is the victim of identity theft to petition the circuit court for an expedited judicial certification of his actual identity and to receive a court order certifying this finding;
- Require the State Police to maintain a database of individuals who have been the victims of identity theft, with access to and use of the database restricted as specified in the proposal;
- Enable a consumer to prevent a consumer reporting agency from reporting any information appearing on the consumer's credit report as a result of an identity fraud offense, by submitting a copy of a valid police report documenting the offense to the consumer reporting agency;
- Expand § 18.2-204.1 to explicitly include acts in which a person sells or transfers someone's birth certificate for the purposes of establishing a false identity for another and acts in which a person unlawfully obtains a document for the purpose of establishing a false status, occupation, membership or license for himself or any other person; and
- Direct the State Library Board to ensure that the procedures for the disposal, physical destruction or other disposition of public records containing social security numbers include all reasonable steps to destroy such documents by shredding, erasing, or otherwise modifying the social security numbers in those records to make them unreadable.

**Current Practice:**

Based on fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, 354 offenders held pre- or post-trial in jail were convicted of misdemeanor identity fraud under § 18.2-186.3. Most (78%) received a jail sentence with a median sentence of one month (see *Background Sentencing Information* below). There were 243 offenders held in jail for misdemeanor convictions for fraudulent use of a birth certificate or driver's license under § 18.2-204.1. Most of these (86.4%) received a jail sentence with a median sentence of one month.

**Background Sentencing Information**

Misdemeanor Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence
Obtain identifying information with intent to defraud § 18.2-186.3	354	21.2%	78.2%	.6%	1 mo.
Fraudulent use of birth certificate or drivers license § 18.2-204.1	243	9.5%	86.4%	4.1%	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

Based on FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 10 offenders 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* below). 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. One conviction for using identifying information resulted in detention of the victim; the offender in that case did not receive an incarceration term. There was one felony conviction under § 18.2-204.1 for fraudulent use of a birth certificate or driver's license to obtain a firearm, with the offender receiving a state-responsible (prison) sentence of 1.5 years.

**Background Sentencing Information**

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 § 18.2-186.3	10	30%	40%	30%	2.3 yrs.
Use of identifying information to defraud, resulting in detention of victim § 18.2-186.3	1	100%	0%	0%	n/a
Fraudulent use of birth certificate or license to obtain firearm § 18.2-204.1	1	0%	0%	100%	1.5 yrs.

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database.

Felony violations of § 18.2-204.1 are covered by the sentencing guidelines as a primary offense. Felony convictions under § 18.2-186.3 and misdemeanor convictions 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.

**Impact of Proposed Legislation:**

By expanding the provisions of §§ 18.2-186.3 and 18.2-204.1, the proposal may have an impact on state-responsible (prison) bed space. However, only 12 offenders have been convicted under the current felony provisions of these statutes over a recent two-year period; only 4 of the 12 offenders were sentenced to a state-responsible (prison) term. While criminal justice databases available to the Commission do not contain information on the number of incidences that may be affected by the proposal, expanding § 18.2-186.3 to include persons who obtain the identifying information of another by impersonating a law enforcement officer of government official is not likely to have a significant impact on state-responsible beds. Likewise, as the current § 18.2-204.1 makes it unlawful to possess another person's birth certificate or certain other documents, expanding this statute to expressly prohibit the sale or transfer of birth certificates and the acquisition of other documents is not likely to have a significant impact on state-responsible beds. Therefore, while the impact of this proposed legislation cannot be determined, it is likely to be negligible.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**