



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

### **House Bill No. 872**

*(Patron – Byron)*

**Date Submitted:** 1/13/04

**LD #:** 04-0193104

**Topic:** Identity theft: fictitious names, DMV identity passport, etc.

#### **Proposed Change:**

The proposal amends §§ 2.2-511, 18.2-186.3, 18.2-186.5 and 63.2-1809 relating to identity theft, use of fictitious names, Department of Motor Vehicle (DMV) identity passports, and authority of the Attorney General to institute or conduct criminal prosecutions in the circuit courts. Amendments to § 2.2-511 allow the Attorney General, with the concurrence of the Commonwealth Attorney, to conduct criminal prosecutions for violations of §§ 18.2-186.3 and 18.2-186.4 relating to identity theft. Currently, § 2.2-511 does not authorize the Attorney General to conduct criminal prosecutions relating to identity theft.

Amendments to § 18.2-186.3 would explicitly prohibit the fraudulent use of identification documents with the name of a false or fictitious person in an attempt to avoid summons, arrest, prosecution or to impede a criminal investigation. As currently written, § 18.2-186.3 does not explicitly prohibit the use of identification documents bearing a fictitious name. 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.

Under § 18.2-186.5 as proposed, the Attorney General, in cooperation with the State Police, may issue an Identity Theft Passport to a victim of identity theft when the offender has been charged or arrested under § 18.2-186.3. The Passport allows the Office of the Attorney General to provide identity theft information to criminal justice agencies and individuals who have submitted a court order. Under the proposal, the Attorney General would be required to transmit a record of the issuance of the Passport to the Department of Motor Vehicles (DMV). DMV would then be required to note on the driver abstract that a court order had been obtained and that an Identity Theft Passport had been issued.

Under the proposal, § 63.2-1809 would be amended to require regulated child day programs to destroy any proof of identity, including social security numbers, upon conclusion of the requisite period of retention.

#### **Current Practice:**

Based on FY2001 and FY2002 Local Inmate Data System (LIDS) data, 354 offenders held pre- or post-trial in jail were convicted of a misdemeanor under § 18.2-186.3 (see *Background Sentencing*

Information below). Most (78%) received a jail term with a median sentence of one month. Two offenders, convicted of additional charges, received a state-responsible (prison) sentence.

Based on FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, ten 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. There was one conviction for using identifying information that resulted in detention of the victim of the identity fraud. The 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.

#### **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.

#### **Impact of Proposed Legislation:**

Amendments to §§ 2.2-511, 18.2-186.5 and 63.2-1809 involve adjustments to administrative or jurisdictional procedures pertaining to identity theft prevention and prosecution. However, by making it a crime to use identification documents with the name of a fictitious or false person, 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 incidents that may be affected by the proposal. Therefore, the magnitude of the impact cannot be computed from existing data sources. Similarly, the impact on jails and community corrections cannot be quantified.

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. 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.**