



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2304 (Patron – McDougle)

Date Submitted: 1/4/2005

LD #: 05-7942104

Topic: Gathering personal information by deception (phishing)

Proposed Change:

The proposal adds § 18.2-152.5:1 to make it a Class 6 felony for any person to obtain, record or access personal identifying information from a computer, by means of a knowing misrepresentation, with intent to defraud another person of such identifying information. The proposal increases the punishment to a Class 5 felony if the identifying information is sold or distributed to another or if the information is used in the commission of another crime.

Currently, under § 18.2-186.3, it is a Class 1 misdemeanor if, without permission and with intent to defraud or sell, a person (1) obtains, records or accesses the personal identifying information of another, (2) obtains goods or services by using the identifying information of another, (3) obtains identification documents in another's name, or (4) obtains identifying information while impersonating a law enforcement officer or government official. Under this statute, it is also a Class 1 misdemeanor for any person to use the identifying information of another (whether dead or alive) or of a fictitious person in order to avoid summons, arrest, or prosecution or to impede a criminal investigation. The penalty for violation of § 18.2-186.3 is increased to a Class 6 felony if it results in financial loss of more than \$200, the victim of the identity theft is arrested or detained, or it is the offender's second or subsequent conviction for this offense. This statute was added by the 2000 General Assembly.

Analysis:

According to the fiscal year (FY) 2003 and FY2004 Local Inmate Data System (LIDS), 874 persons held pre- post-trial in jail were convicted of misdemeanor crimes under § 18.2-186.3. Nearly all of these offenders (88%) were given a local-responsible (jail) term (median sentence of one month).

Based on FY2002 and FY2003 Pre/Post-Sentence Investigation (PSI) data, 29 offenders were convicted of felony offenses under § 18.2-186.3. The majority of felony cases (86%) were the result of financial loss to the victim in excess of \$200. In felony cases, 28% of the offenders were not given an active term of incarceration, 38% were given a jail term (median sentence of four months), and 34% received a state-responsible (prison) sentence; of the offenders ordered to prison, the median sentence was 18 months.

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

Impact of Proposed Legislation:

The proposed legislation may increase the correctional bed space needs of the Commonwealth; however, the number of incidents affected by the proposal and the potential increase in prosecutions cannot be estimated with available data.

If adopted, the new felony crimes would not be covered by Virginia's sentencing guidelines as the primary (or most serious) offense in a sentencing event. Nonetheless, convictions for the proposed crimes could augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the 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.

phish02_7942