



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1049
Amendment in the Nature of a Substitute
(Patron Prior to Substitute – Reid)

LD #: 06-1383488

Date: 1/25/2006

Topic: Fraudulent use of birth certificates

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
\$12,548 (1 bed)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends §§ 18.2-204.1 and 18.2-204.2 to increase penalties for crimes involving the fraudulent use of birth certificates or other identification documents, and to expand fraudulent use to include the intent to procure employment.

Under subsection A of § 18.2-204.1, the proposal would make the use (including possession) of a birth certificate of another for the purpose of establishing a false identity a Class 6 felony, a crime that is currently a Class 1 misdemeanor. However, if the intent is to purchase, or enable another to purchase, a firearm or procure employment, the punishment is increased from a Class 6 felony to a Class 5 felony.

Under subsection B of § 18.2-204.1, the use (including possession) of any document (other than a birth certificate) for the purpose of establishing a false status or identity remains a Class 1 misdemeanor. If the intent is to obtain a firearm, the penalty remains a Class 6 felony; if the intent is to procure employment, the penalty is also a Class 6 felony.

According to the proposed § 18.2-204.2, the penalty for possession of a fictitious, facsimile, or simulated identification document is raised from a Class 2 misdemeanor to a Class 1 misdemeanor. The penalty to manufacture, sell or reproduce such a document remains a Class 1 misdemeanor.

Analysis:

According to fiscal year (FY) 2003 and 2004 Local Inmate Data System (LIDS) data, there were 151 cases resulting in conviction for the misdemeanor fraudulent use of a birth certificate or other identification document. Approximately 88% of these offenders received local-responsible (jail) terms with a median sentence of one month. The remaining offenders were sentenced to probation.

From the same two years of LIDS data, only three offenders were convicted of the felony – fraudulent use of a birth certificate or other identification document to obtain a firearm. Two of these individuals received jail sentences (4 and 6 months) and the other was sentenced to two years in prison.

Also from the same two years of LIDS data, 65 offenders were convicted of the Class 2 misdemeanor – possession of a fictitious driver’s license or other identification document; approximately 91% of these offenders were sentenced to jail with a median sentence of ten days. Finally, 36 offenders were convicted of the Class 1 misdemeanor – manufacture or sale of a fictitious identification document; 75% of these offenders were sentenced to jail with a median sentence of one month.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalties for crimes involving the fraudulent use of birth certificates or other identification documents, the proposal is expected to result in an increase in the need for additional state-responsible (prison) beds by 2012. However, the magnitude of this impact cannot be quantified; available data cannot separate offenses involving birth certificates from those involving other identification documents.

Nonetheless, if it is assumed that all of the felony offenses in § 18.2-204.1 that are affected by the proposal involve the fraudulent use of birth certificates, rather than other identification documents, the estimated impact would be an additional 48 state-responsible (prison) beds needed by FY2012 at a cost to the state of \$1,114,593 for those beds.

Local adult correctional facilities. By raising the penalty for possession of a fictitious, facsimile, or simulated identification document from a Class 2 misdemeanor to a Class 1 misdemeanor, the proposal is expected to result in the need for one additional local-responsible (jail) bed by 2012 (cost of \$12,548 to the state, \$11,567 to the localities).

For the portions of the proposed § 18.2-204.1 that cannot be accurately estimated, an additional two jail beds may be required by 2012, at a cost of \$15,843 to the state, and \$14,605 to the localities.

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY07	FY08	FY09	FY10	FY11	FY12
1	1	1	1	1	1

Adult community corrections programs. It is unlikely that the proposal will have an impact on community corrections resources. For offenders who are required to serve longer prison terms as a result of the proposal, the need for community corrections services will be delayed until the additional prison time is served.

Virginia’s sentencing guidelines. Felony convictions under the current § 18.2-204.1 for fraudulent use of an identification document to obtain a firearm are covered as a primary offense under the Fraud guidelines, and would continue to be covered. The new felony offenses, as well as the misdemeanor offenses are not covered by the sentencing guidelines, but may appear as additional offenses that augment the guidelines recommendation. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs since mandatory minimum sentences are not applicable to juvenile offenders. Also, the Department’s Length-of-Stay (LOS) guidelines will not be affected by the proposed changes.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on §53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2005.
2. New cases representing state-responsible sentences were based on the admissions forecast as approved by the Secretary's Committee on Inmate Forecasting in July 2005. New cases representing local-responsible sentences were based on an admissions forecast developed by the Commission using LIDS provided by the Compensation Board.
3. Cost per prison bed was assumed to be \$23,966 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2004 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$26.03 per day or \$9,506 per year. The local cost was calculated by using the daily expenditure cost of \$54.37 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$23.99 per day or \$8,763 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2006, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2004. For felonious frauds, this rate was 11.08%.
3. The local-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in local jails were earning sentence credits in FY2003; this rate was 60.3%.
4. To gauge the impact, stand-in sentences were randomly drawn from the sentences of persons convicted for crimes with the new penalty structure that were similar to the affected crimes.
 - a. False statements on a criminal history consent form (§ 18.2-308.2:2(K)) was the stand-in for fraudulent use of identifying documents to obtain a firearm.
 - b. Identity fraud, financial loss greater than \$200 (§ 18.2-186.3) was the stand-in for fraudulent use of identifying documents.
 - c. Manufacture, sale, or reproduce identification documents (§ 18.2-204.2) was the stand-in for the possession of false identification documents.

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