



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 460 (Patron – Devolites Davis)

LD #: 06-9821726

Date: 1/13/2006

Topic: Identity theft

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$5,652,427 (236 beds)
- **Local Adult Correctional Facilities:**
At least \$185,333 (19 beds)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

Summary of Proposed Legislation:

The proposal amends § 18.2-186.3 to increase penalties for several offenses related to identity theft. In general, violations of this section currently punishable as Class 1 misdemeanors would be elevated to Class 6 felonies. Additionally, the penalty for any second or subsequent conviction under this section would increase from a Class 6 felony to a Class 5 felony. Any violation resulting in the arrest and detention of the person whose identifying information was used to avoid arrest or to impede a criminal investigation would also increase from a Class 6 felony to a Class 5 felony. A violation resulting in a financial loss of greater than \$200 would remain a Class 6 felony.

Analysis:

According to fiscal year (FY) 2003 and 2004 Local Inmate Data System (LIDS) data, there were 872 convictions for misdemeanor violations of § 18.2-186.3. The majority of these convictions (793) were for unlawfully obtaining identifying information with intent to defraud, a violation of subsection A of § 18.2-186.3. Of these offenders, 12% were sentenced to probation and 88% received local-responsible (jail) terms with a median sentence of just over one month. There were also 62 convictions for unlawfully obtaining identifying information to avoid arrest or impede an investigation. Nearly all (94%) of these offenders received jail terms with a median sentence of just over one month, while the remaining 6% were sentenced to probation. Finally, 17 offenders were convicted of unlawfully obtaining identifying information with intent to sell or distribute it. Approximately 53% of these offenders received jail terms with a median sentence of 1.3 months, while the remaining 47% were given probation.

According to fiscal year (FY) 2002 and 2003 Pre/Post Sentence Investigation (PSI) data, eight offenders were convicted of the portion of subsection D of § 18.2-186.3 where any violation within the statute that results in the arrest and detention of the person whose identification documents or information were used to avoid summons, arrest, prosecution, or to impede a criminal investigation; this crime is punishable as a Class 6 felony. Of these, only one offender (12.5%) received a state-responsible (prison) term; his sentence was one year. Of the seven remaining offenders, four (50%)

received jail terms and three (37.5%) were sentenced to probation. One offender was convicted of a second or subsequent violation under this section, receiving a jail term of just over four months.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalties for several offenses related to identity theft, the proposal is expected to result in the need for at least 236 additional state-responsible (prison) beds by 2012.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY07	FY08	FY09	FY10	FY11	FY12
114	197	223	233	234	236

Local adult correctional facilities. The proposal is expected to result in the need for 19 additional local-responsible (jail) beds by 2012 (cost to state: \$185,333; cost to localities: \$170,847).

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

FY07	FY08	FY09	FY10	FY11	FY12
16	19	19	19	20	19

Adult community corrections programs. The proposal may have an impact on community corrections resources; however, the impact cannot be determined. 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. Violations of § 18.2-186.3 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 effect of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the effect of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$5,652,427 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.

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.
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. 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. The Class 6 felonies under § 18.2-186.3 provided stand-in sentences for the Class 1 misdemeanor offenses.
 - b. Forgery and uttering (§ 18.2-172), and credit card fraud (§ 18.2-193) provided stand-in sentences for the Class 6 felonies being elevated to Class 5 under the proposal.

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