



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 340

(Patron – Cuccinelli)

LD#: 08-4061216

Date: 1/7/2008

Topic: Medical Fraud

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

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

Summary of Proposed Legislation:

The proposal adds §§ 18.2-188.2 to the *Code of Virginia* to make it unlawful for a person, with the intent to cheat or defraud a hospital or health care provider, to give a false name, address, social security number or other form of identification in order to avoid payment for medical services rendered. Violation would be a Class 1 misdemeanor if the value of the service obtained is less than \$1,000 and a Class 6 felony when the value is \$1,000 or more. The proposal explicitly states that the proposed § 18.2-188.2 should not be construed to interfere with the provision of emergency medical services as required by federal or state law.

The addition of the proposed § 32.1-135.3 would require hospitals to post notices describing the provisions above and would allow hospitals to fingerprint recipients of medical services for identification purposes if they do not have health insurance, are not eligible for Medicaid, and cannot demonstrate an ability to pay for the services rendered.

Under current law, it is a Class 1 misdemeanor to use another individual's identifying information to obtain goods or services (§ 18.2-186.3(A)(2)). If the act results in financial loss greater than \$200, violation is a Class 6 felony. Section 18.2-186.3(A)(2) does not apply to the use of identifying information of fictitious persons. Although some of the acts described in the proposed § 18.2-188.2 may fall under existing statutes, it would extend the scope of current law to include obtaining medical services using the identity of a fictitious person. In addition, § 18.2-188.2 would make medical fraud resulting in a loss of more than \$200 a Class 5 felony.

Under the existing provisions of § 18.2-172, it is a Class 5 felony to forge any writing. Some individuals who may be prosecuted under the proposed § 18.2-188.2 may already qualify for prosecution under § 18.2-172.

The General Assembly has enacted several laws pertaining to fraudulently obtaining medical assistance. Section 32.1-314, for instance, makes knowingly and willfully making any false statement in an application for payment under medical assistance a felony punishable by a term of imprisonment of 1 to 20 years. Penalties for medical assistance fraud range from a fine to 20 years in prison.

Analysis:

According to fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) data, 174 offenders were convicted of a felony for using the identifying information of another, causing financial loss of \$200 or more (§ 18.2-186.3(D)). Approximately 43% of these offenders received a state-responsible (prison) term, for which the median sentence was 1.6 years. Another 28% were sentenced to a local-responsible (jail) term with a median sentence of six months. The remaining offenders convicted of this crime were sentenced to probation without an active term of incarceration.

Of the 1,252 felony convictions for forgery under § 18.2-172, 46% were committed to prison (with a median sentence of two years), 20% were sentenced to jail (for a median term of six months), and 34% received probation without incarceration.

According to the Local Inmate Data System (LIDS) for calendar year (CY) 2005 and CY2006, 617 offenders held pre- or post-trial in jail were convicted of a Class 1 misdemeanor under § 18.2-186.3(A) for obtaining or using identifying information of another person, causing financial loss of less than \$200. The majority of these offenders (75%) were sentenced to a local-responsible (jail) term, with a median sentence length of approximately two months.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space cannot be determined.

Local adult correctional facilities. The proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice 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.