



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 435

(Patron – Griffith)

LD #: 10100838

Date: 12/7/2009

Topic: Use of a minor's identity in identity theft

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends § 18.2-186.3 relating to identity theft. According to the proposal, any person who uses the identifying information of a minor over whom he exercises custodial authority in order to obtain money, credit, loans, goods or services is guilty of a Class 6 felony.

Currently, identity theft with intent to defraud under § 18.2-186.3(A) is punishable as a Class 1 misdemeanor; however, any violation resulting in financial loss of greater than \$200 is a Class 6 felony. Several other offenses under this section are also Class 6 felonies; specifically, any second or subsequent violation, any violation involving the use of five or more persons' identifying information, or any violation resulting in the detention of the victim. Any violation of this section involving the use of 50 or more persons' identifying information is punishable as a Class 5 felony.

Section 18.2-186.3 was adopted during the 2000 General Assembly session and has been amended several times in recent years. Most notably, the 2006 General Assembly added the Class 6 felony for a violation involving the use of five or more persons' identifying information and the Class 5 felony for a violation involving the use of 50 or more persons' identifying information.

Analysis:

According to the CY2007 and CY2008 Local Inmate Data System (LIDS), 519 offenders were convicted of misdemeanor identity theft under § 18.2-186.3(A). The majority (72%) of these offenders received a local-responsible (jail) term, for which the median sentence was two months; 30 offenders were sentenced to terms of more than 12 months following conviction for multiple misdemeanors. Another 15% of offenders were given probation without a term of active incarceration. The remaining 13% of offenders received state-responsible (prison) terms, indicating they had also been sentenced for one or more felony offenses.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal would increase the penalty for identity theft from a Class 1 misdemeanor to a Class 6 felony in certain circumstances. In this way, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of convictions affected by the proposal. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. The proposal could also affect the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. The proposed Class 6 felony would not be covered by the sentencing guidelines as the primary (most serious) offense in a sentencing event; however, this offense may 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.

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.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), 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; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.