Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2402
(Patron – Bell)

LD#: 09-0520806 (Revised) **Date:** 1/8/2009

Topic: Identity theft

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** Cannot be determined
- **Local Adult Correctional Facilities:** Cannot be determined
- **Adult Community Corrections Programs:** Cannot be determined
- **Juvenile Correctional Centers:** None ($0)
- **Juvenile Detention Facilities:** None ($0)

Summary of Proposed Legislation:

The proposal amends § 18.2-186.3, relating to identity theft, to expand the applicability of the felony provision. Currently, § 18.2-186.3 (A,2) specifies that obtaining goods or services using other person's identifying information without permission and with intent to defraud is a violation of this section. Under the proposal, this provision would be expanded to include money, credit or anything else of value obtained in such a manner.

The General Assembly has amended § 18.2-186.3 several times. During the 2001 session, the General Assembly added a provision allowing for the inclusion of expenses associated with correcting inaccuracies or errors in credit reports or other identifying information in the amount of restitution ordered by the court. Subsection F, relating to assistance from the Attorney General in obtaining information necessary to correct errors or inaccuracies, was also added in 2001. In 2003, obtaining, recording or accessing identifying information while impersonating a law enforcement officer or government official with the intent to defraud was added to the statute. The 2003 General Assembly also expanded subsection B to include offenses relating to identity theft with the intent to sell or distribute a person's information to another. In 2004, the General Assembly made it unlawful for a person to use identifying information or documents of a false or fictitious person to avoid summons, arrest, prosecution or to impede a criminal investigation. The 2006 General Assembly made a violation of subsection B a Class 6 felony if the offense involved five or more victims and a Class 5 felony if the offense involved 50 or more victims.

Analysis:

According to fiscal year (FY) 2006 and FY2007 Pre/Post Sentence Investigation (PSI) data, there were 251 felony convictions under § 18.2-186.3(D) for the use of identifying information to defraud another, resulting in a financial loss greater than $200. Of these, 34% were sentenced to probation without an active term of incarceration. Another 30% of the offenders were sentenced to a local-responsible (jail) term, for which the median sentence was five months. The remaining 36% were sentenced to a state-responsible (prison) term. For offenders sentenced to prison, the median sentence length was 1½ years.

More than three-fourths (79%) of the offenders were sentenced for other offenses in addition to violations of § 18.2-186.3(D). The majority of these offenders were also convicted of other types of fraud, including forgery and credit card fraud.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of § 18.2-186.3(D), 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. The impact, however, may be mitigated to the extent that these cases currently are prosecuted under other felony provisions of the *Code*.

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 resources. Because some offenders may be convicted of a felony instead of a misdemeanor, the proposal may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the impact on local or state community corrections resources that may result from the proposal.

Virginia's sentencing guidelines. The guidelines cover violations of § 18.2-186.3. 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.

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