



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 932 (Patron – Bell)

LD#: 10102337

Date: 1/4/2010

Topic: 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 proposal restructures statutes and increases certain penalties relating to identity theft.

Currently, identity theft in violation of § 18.2-186.3 is a Class 6 felony in cases in which the offense involved financial loss of \$200 or more, resulted in the arrest or detention of the victim, or was the offender's second or subsequent conviction for identity theft. Committing identity theft with the intent to sell or distribute the information is a Class 6 felony if there are 5 or more victims and a Class 5 felony if there are 50 or more victims. Other than described above, identity theft is a Class 1 misdemeanor.

Under the proposal, it would be a Class 4 felony to obtain, with the intent to sell or distribute the information, identification documents in another person's name or any identifying information that would assist in obtaining such identification documents or in accessing the financial resources of another (regardless of the dollar amount involved or number of victims). It would be a Class 5 felony for any person, with the intent to defraud, to 1) obtain money, goods, or services by using another person's identifying information (regardless of dollar amount), 2) access identifying information while impersonating a law-enforcement officer or government official, or 3) use identification documents or identifying information to impede a criminal investigation or avoid arrest. Finally, it would be a Class 1 misdemeanor to obtain, with the intent to defraud, identification documents in another person's name and a Class 2 misdemeanor to access identifying information that could assist in obtaining such documents or in accessing the financial resources of another; unlike current law, there is no provision that increases these misdemeanors to felonies upon a second or subsequent conviction.

While the current law prohibits obtaining money, credit, loans, goods, or services using the identifying information of another, the proposal removes language relating to credit or loans. The proposal would require that, in order for a person to be prosecuted for using identification documents or identifying information to impede a criminal investigation or avoid arrest, the intent must be to defraud.

Analysis:

According to Sentencing Guidelines data for fiscal years 2008 and 2009, 322 offenders were convicted of a felony for identity theft resulting in financial loss greater than \$200. The identity theft was the primary, or most serious, offense in 112 of the cases. Of the 112 cases, half (52%) of the offenders did not receive an active term of incarceration, while 28% were sentenced to a local-responsible (jail) term. The remaining 20% received a state-responsible (prison) term, with a median sentence of 1.5 years.

Pre/Post-Sentence Investigation (PSI) data for fiscal years 2007 and 2008 indicate that 52 offenders were convicted of other felonies defined in § 18.2-186.3. The identity theft was the most serious offense 23 of the cases. Of the 23 cases, half (52%) of the offenders were sentenced to a local-responsible (jail) term, with a median sentence of 6.5 months; another 31% did not receive an active term of incarceration. For the 17% who received a state-responsible (prison) term, the median sentence was 2.2 years.

According to fiscal year 2008 and 2009 General District Court Automated Information System (CAIS) data, when convicted of a misdemeanor identity theft (as the primary, or most serious, offense), more than half (57%) of offenders were given a jail term, with a median sentence of one month. The remaining 43% were not given an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Because it increases the penalties for most identity theft offenses, including raising some misdemeanors to felonies, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, for two misdemeanor crimes, the proposal removes the felony enhancement provided in current *Code* for the second or subsequent conviction. Existing databases do not provide sufficient detail to estimate the impact of the proposal.

Local adult correctional facilities. By elevating some crimes from misdemeanors to felonies, the proposal may decrease future local-responsible (jail) bed space needs, as some offenders who currently receive a jail term would receive a prison term under the proposal. Conversely, removing the felony enhancement for two misdemeanors may increase jail bed space needs, since affected offenders could no longer receive a prison term. The net impact cannot be estimated with existing data.

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 adult community corrections resources. Since the number of cases that may be affected cannot be estimated, the potential impact on community corrections resources cannot be determined.

Virginia's sentencing guidelines. The sentencing guidelines cover felony convictions for identity theft resulting in financial loss of \$200 or more (§ 18.2-186.3). The other offenses listed in this statute are not covered by the guidelines as the primary (or most serious) offense; however, a conviction under one of those provisions may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. Since the proposal redefines existing identity theft crimes and the \$200 felony threshold would no longer apply, the guidelines would not cover any identity theft convictions 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.

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