



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

**House Bill No. 1684**  
***Amendment in the Nature of a Substitute***  
***(Patron Prior to Substitute – Bell, R.B.)***

**LD #:** 13104461

**Date:** 1/23/2013

**Topic:** Identity theft

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$30,152 (1 bed)
- **Local Adult Correctional Facilities:**  
At least -\$288 (less than 1 bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

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

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#### Summary of Proposed Legislation:

The proposal amends § 18.2-186.3 to increase the penalties for certain identity theft offenses. Currently, identity theft under § 18.2-186.3 is a Class 6 felony in cases in which the offense resulted in the arrest or detention of the victim. Committing identity theft with the intent to sell or distribute the information is also a Class 6 felony if there are five or more victims. Under the proposal, these two offenses would be punishable as Class 5 felonies. Identity theft involving 50 or more victims is currently a Class 5 felony; the proposal would elevate this offense to a Class 4 felony.

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#### Analysis:

According to fiscal year (FY) 2011 and FY2012 Circuit Court Case Management System<sup>1</sup> data, 16 offenders were convicted of a Class 6 felony under § 18.2-186.3 for identity theft resulting in the arrest or detention of the victim. The identity theft was the primary, or most serious, offense in only three of these cases. While two of these offenders were sentenced to local-responsible (jail) terms of 6 and 12 months, respectively, the remaining offender did not receive an active term of incarceration to serve after sentencing. One additional offender was convicted of a Class 6 felony for identity theft involving five or more victims as the primary offense at sentencing; this individual did not receive an active term of incarceration to serve after sentencing. Three offenders were convicted of Class 5 felonies for identity theft involving 50 or more victims, but the identity theft was not the primary offense in any of the cases.

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#### Impact of Proposed Legislation:

**State adult correctional facilities.** Because it increases the penalties for three felony identity theft offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. While three offenders were convicted of identity theft involving 50 or more victims under § 18.2-186.3(D) in a recent two-year period, this offense was not the primary, or most serious, offense in any of the cases.

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<sup>1</sup> Formerly referred to as the Court Automated Information System (CAIS).

Nevertheless, increasing the penalty for this offense from a Class 5 to a Class 4 felony may increase state-responsible bed space needs. However, the impact of this portion of the proposal cannot be determined.

Sufficient data exist to estimate the impact of increasing the penalties for the two Class 6 felonies. The impact is estimated to be at least one bed by FY2019. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$30,152.

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

FY14	FY15	FY16	FY17	FY18	FY19
0	1	1	1	1	1

**Local adult correctional facilities.** The proposal is expected to decrease the need for local-responsible (jail) beds. The impact is estimated to be a decrease of less than one bed statewide, for a savings to the state of \$288 and \$418 to the localities.

**Adult community corrections programs.** The net impact of the proposal on community corrections resources cannot be determined.

**Virginia's sentencing guidelines.** The identity theft offenses affected by this proposal are not covered by the sentencing 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. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice, the proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional centers cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention center bed space needs, the actual impact on detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$30,152 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 of Public Safety's Committee on Inmate Forecasting in 2012.
2. Cost per prison bed was assumed to be \$29,081 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.*
3. Cost per jail bed was based on The Compensation Board's FY2011 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.21 per day or \$10,304 per year. The local cost was calculated by using the daily expenditure cost of \$74.07 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 \$40.96 per day or \$14,961 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 sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2013, is phased in to account for case processing time.

2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected Class 6 felony cases under § 18.2-186.3(D) will be similar to the distribution of sentences under the existing Class 5 felony provision for forgery (§ 18.2-172).
3. The state-responsible (prison) 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, 2011. For fraud offenders, this rate was 10.3%.

**Limitations**

1. The Circuit Court Case Management System does not include cases from Fairfax, Alexandria, or Virginia Beach.

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