



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2441 ***(Patrons – Wilt and Landes)***

LD#: 19100181 (Revised)

Date: 1/23/2019

Topic: Special identification cards without photographs

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

- **Juvenile Direct Care:**
Cannot be determined *
- **Juvenile Detention Facilities:**
Cannot be determined **

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposed legislation amends § 46.2-345 and adds § 46.2-345.2 to the *Code of Virginia*, relating to the issuance of special identification cards without a photograph.

Currently, under § 46.2-345, the Department of Motor Vehicles (DMV) shall issue a special identification card to any person who is a resident of the Commonwealth if all requirements for an applicant under this section are met. According to § 46.2-345, a special identification card may be similar to a driver's license and include a photograph of its holder, but it shall be readily distinguishable from a driver's license. Moreover, it must clearly state that it does not authorize the holder to drive a motor vehicle.

Under the proposed § 46.2-345.2, upon the application of any eligible person with a sincerely held religious belief prohibiting the taking of a portrait photograph, DMV may issue a special identification card without a photograph if specified criteria are met. Such an applicant would be required to present an approved and signed IRS Form 4029 (the exemption from social security and Medicare taxes). The bill allows a special identification card without a photograph to be similar to a driver's license but requires (i) that it be clearly distinguishable from a driver's license, (ii) that it not include a photograph of its holder, and (iii) that it clearly state that (a) the card does not authorize the holder to operate a motor vehicle, (b) federal limits apply, and (c) the card is not valid identification to vote. Any person who uses a false or fictitious name or address, knowingly makes a false statement, conceals a material fact, or commits a fraud in any application for a special identification card without a photograph would be guilty of a Class 2 misdemeanor. However, if the special identification card is obtained for the purpose of committing any felony, it would be a Class 4 felony. These penalties parallel those defined in § 46.2-345 relating to special identification cards issued by DMV. Furthermore, § 46.2-345 is amended such that an applicant currently holding a special identification card without a photograph is ineligible to receive another special identification card.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal years 2013 through 2018, there was one felony conviction under § 46.2-345 for providing false information on the application for a special identification card for the purpose of purchasing a firearm or committing a felony. The offender convicted under § 46.2-345 received a six-month sentence. According to General District Court CMS data for the same period, there were four misdemeanor convictions under § 46.2-345; none of these offenders were sentenced to an active term of incarceration.

In 2018, the Virginia Department of Motor Vehicles (DMV) conducted a study of the feasibility of issuing an identification (ID) card without displaying the individual's photograph.¹ The study concluded that an ID card without a photograph could be used only for limited purposes. Based on its research, DMV determined that an ID card without a photograph could not be used to board a domestic flight, purchase a firearm, purchase alcohol, purchase certain pharmaceuticals, vote, or to meet any other government or private business purpose that requires a photo ID. Given the limited uses of an ID card without a photograph, and through discussion with law enforcement both in Virginia and in states that currently offer similar credentials, DMV determined ID cards without photographs carry a lower risk of fraud and abuse than exists for traditional driver's licenses and ID cards. Per DMV, applicants for the proposed ID card must present the same forms of proof documents as are required for driver's licenses and ID cards, namely proof of identity, legal presence, residency, and social security number, and go through the Department's verification process. Regarding the purchase of alcohol, § 4.1-304 of the *Code of Virginia* states that a purchaser must have identification with a photograph in order to purchase alcohol. In reference to gun purchases, § 18.2-308.2:2 states that "to establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense that demonstrates that the prospective purchaser resides in Virginia." As to voting, § 24.2-643 of the *Code of Virginia* states that a qualified voter must present photo identification in order to vote. Further, as noted on the federal Transportation Security Administration (TSA) website (<https://www.tsa.gov/travel/security-screening/identification>), TSA requires a government-issued ID with a photo in order to board an airplane. Finally, the federal government has determined that certain pharmaceuticals may not be purchased without photo identification. An example of this is the Combat Methamphetamine Epidemic Act of 2005, which requires individuals purchasing products containing pseudoephedrine, ephedrine, and phenylpropanolamine to present photo identification.

Impact of Proposed Legislation:

State adult correctional facilities. According to the Virginia DMV, an ID card without a photograph could be used only for limited purposes and it is unlikely that the proposal would result in any convictions for the new Class 4 felony defined in the proposal for obtaining the ID card for the purpose of committing a felony. Under these conditions, the proposal is unlikely to increase the state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. By making it a Class 2 misdemeanor for any person to use a false or fictitious name or address, knowingly make a false statement, conceal a material fact, etc., on the application for the proposed ID card, the proposal may impact local-responsible (jail) bed space needs. The magnitude of the impact cannot be determined; however, any impact is likely to be small.

Adult community corrections resources. The proposal is not expected to impact state community corrections resources. Any impact on local community-based probation services is likely to be small.

¹ Virginia Department of Motor Vehicles, *Identification Card without a Photograph Study 2018 Report*, November 2018 (Retrieved from https://www.dmv.virginia.gov/documents/id_photo.pdf).

Virginia’s sentencing guidelines. Felony convictions under the proposed § 46.2-345.2 would not be covered by the sentencing guidelines when this crime is the primary, or most serious, offense in a case. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal’s impact on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 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.

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