

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

**False Identification Cards
(SJR 363, 2009)**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**COMMONWEALTH OF VIRGINIA
RICHMOND
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COMMONWEALTH of VIRGINIA

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January 13, 2010

TO: The Honorable Timothy M. Kaine, Governor of Virginia

And

Members of the Virginia General Assembly

The Code of Virginia § 30-156 authorizes the Virginia State Crime Commission to study, report and make recommendations on all areas of public safety and protection. Section 30-158(3) provides the Commission with the power to conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156...and formulate its recommendations to the Governor and the General Assembly.

Enclosed for your review and consideration is the final report of the study on False Identification Cards. The Commission received assistance from all affected agencies and gratefully acknowledges their input.

Respectfully,

A handwritten signature in black ink that reads "Janet Howell".

Janet D. Howell
Chair

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**Delegate Melvin resigned as a Member of the House of Delegates effective May 31, 2009. Delegates Ward Armstrong and Onzlee Ware were appointed to the Crime Commission on January 7, 2009 and July 10, 2009, respectively.*

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I. Authority

The Code of Virginia, § 30-156, authorizes the Virginia State Crime Commission (“Crime Commission”) to study, report and make recommendations on all areas of public safety and protection. In so doing, the Crime Commission shall endeavor to ascertain the causes of crime and recommend ways to reduce and prevent it, explore and recommend methods of rehabilitation of convicted criminals, study compensation of persons in law enforcement and related fields and study other related matters including apprehension, trial and punishment of criminal offenders.¹ Section 30-158(3) empowers the Crime Commission to conduct studies and gather information and data in order to accomplish its purpose as set forth in § 30-156 ... and formulate its recommendations to the Governor and the General Assembly.

Using the statutory authority granted by the General Assembly to the Crime Commission, and pursuant to a Senate Joint Resolution, staff conducted a study on the issue of false identification cards in the Commonwealth.

II. Executive Summary

During the 2009 Regular Session of the Virginia General Assembly, Senator Stephen H. Martin introduced Senate Joint Resolution 363, which directed the Crime Commission to “study issues regarding the apprehension and prosecution of persons with false identification cards.”² Also to be examined were measures to prevent the use of such cards, the identification of such cards by law enforcement and others, and judicial procedures related to the prosecution of offenses involving false identification cards.

Dr. Don Boswell, Director of Law Enforcement Services for the Virginia Department of Motor Vehicles (“DMV”), presented information to the Crime Commission on the new identification cards being issued in Virginia. These cards are amongst the most advanced issued by any of the fifty states—arguably the most advanced at the present time—and have a number of security features designed to thwart counterfeiting efforts. In combination with new DMV processing procedures, such as mailing the new identification cards to a specific address instead of issuing them directly to an applicant in a DMV office, these cards should greatly help to reduce the number of false identification cards in Virginia. They are being phased in over the next several years as Virginians renew their driver’s licenses, or new licenses are issued. In eight years time, all Virginia driver’s licenses and identification cards will have been updated to the more advanced version.

There are ten criminal statutes in the Code of Virginia that deal with false identification documents, creating over thirty different criminal offenses. These cover a gamut of crimes, ranging from the possession of a false driver’s license, to obtaining or attempting to obtain a false identification document, to manufacturing false identification documents, with some

¹ VA. CODE ANN § 30-156 (Michie 2009).

² S.J. Res. 363, Gen. Assem., Reg. Sess. (Va. 2009).

overlap between the offenses. Data obtained from the Virginia Compensation Board and the Virginia Criminal Sentencing Commission for fiscal years (“FY”) 2007 and 2008 indicate that several hundred people are convicted each year of offenses involving false identification documents. Staff solicited general comments from local law enforcement, sheriffs, and Commonwealth’s Attorneys throughout the state on this issue. No indication was received that Virginia’s current criminal statutes are insufficient to prosecute these offenses. Law enforcement’s general estimate as to the scope of the problem of false driver’s licenses in Virginia varied widely, depending upon geographic location. The Bureau of Law Enforcement for the Virginia Department of Alcoholic Beverage Control commented that in their view, the prevalence of false identification documents in the Commonwealth is a serious problem, with the manufacture and use of such items not currently on the decline.

III. Background

Law Enforcement Efforts by Virginia DMV³

The DMV is responsible for the issuance of driver’s licenses and identification cards for residents of Virginia.⁴ Along with that responsibility, they are given the authority to enforce all laws related to the functions and duties of the DMV.⁵ To that end, DMV has two law enforcement groups that investigate potential driver’s license and identification card fraud. The DMV Law Enforcement Services employs approximately 80 sworn agents and investigates customer attempts to obtain a driver’s license or identification card by providing fraudulent documents, such as a false birth certificate or out-of-state driver’s license. The DMV Special Investigations Unit employs approximately 8 sworn agents and investigates DMV employees suspected of knowingly issuing driver’s licenses or identification cards to persons not entitled to receive them.

To assist these groups, DMV established a toll-free hotline, Zero Fraud, in January of 2006, to provide a means for the public to anonymously report suspected crimes involving false driver’s licenses and identification cards. In 2007, DMV also created a “Fraud Buster” award program for employees who are offered bribes by customers attempting to obtain fraudulent driver’s licenses or identification cards. Employees who refuse the bribes and then work with DMV Law Enforcement Services to arrest and prosecute these customers receive \$100 cash awards.

All DMV employees responsible for reviewing identification documents undergo a three day training course designed by the American Association of Motor Vehicle Administrators. Participants engage in hands-on evaluation of various documents using UV lights and magnification loops to build familiarity with detecting altered or counterfeit documents. In FY 2007, 50 employees received this training; in FY 2008, 31 received the training. No training was conducted in FY 2009, as all employees required to complete the training had done so. In

³ The information in this section was provided by Karen Chappell, Deputy Commissioner, Virginia Department of Motor Vehicles.

⁴ VA. CODE ANN. § 46.2-200 (Michie 2009); *see* VA. CODE ANN. §§ 46.2-328, 46.2-345 (Michie 2009).

⁵ VA. CODE ANN. § 46.2-217 (Michie 2009).

August of 2009, DMV initiated a new fraud awareness training course for field management employees. The three day course focuses on how to effectively deter and detect fraud through the use of internal controls, reports, and pro-active activities.

Perhaps the most effective means DMV has recently established to combat fraudulent driver's licenses and identification cards, though, are Virginia's new driver's licenses.

Virginia's New Driver's Licenses⁶

Beginning in March of 2009, Virginia DMV began issuing new driver's licenses and identification cards, utilizing a number of improved security features. The transition process was incremental, office by office, throughout the state; by July of 2009 all DMV offices were issuing the new licenses. The prior driver's licenses were constructed of a poly-vinyl chloride (PVC) material of a laminated construction. The new licenses are made of polycarbonate (PC) material of a monolithic construction. They feature multiple layers of security printing that are fused together in the solid body of the card. The layers are designed to prohibit anyone from trying to delaminate or peel apart the layers of the finished card. Instead of having the personal data of the license then printed on the card, the new cards make use of laser engraving.

While the former driver's licenses were given directly to a qualified applicant, and were printed and made available at every DMV branch office, the new licenses are all personalized and receive the finishing details with laser engraving at one site in Virginia, where there is twenty-four hour armed security. They are not issued in person, but are mailed to the address supplied by the applicant. (Applicants receive a temporary paper driving permit to use until they receive their new card). The basic card itself is produced in a secure Canadian banknote manufacturing facility that prints Canadian currency. The equipment needed to produce Virginia's new driver's licenses is therefore available only to legitimate manufacturers and is extremely expensive.

There are extensive security details on the new licenses and identification cards. The most visible are the small duplicate photos of the card holder printed on a clear window, visible from both the front and back of the card. This type of clear window photo is an extremely advanced feature for identification cards, and is the first of its kind in the United States. (The Northwest Territories in Canada began using these clear windows in 2006, and Sweden began using them in 2007. Virginia is the third in the world to employ such technology). The main photo of the card holder is rendered in a high definition grayscale, rather than color. The customer number, date of birth, sex, and the signature of the card holder on the front and back of the card are tactile raised. The edge of the card makes a distinctive ringing sound when it is tapped on a hard surface or snapped with a fingernail.

Additional security design features are only apparent when magnification, UV light, or a barcode reader is used. Micro-lettering is employed on borders and designs on both the front and back of the card. Deliberate errors are incorporated into the design, making counterfeiting even more difficult. Fine line patterns in the artwork design are present on both the front and back of

⁶ The information in this section is from the presentation made to the Crime Commission on May 11, 2009, by Donald L. Boswell, Ph.D., Director of Law Enforcement Services, Virginia Department of Motor Vehicles.

the card and are visible through the edges of the main photograph in the front. An additional fluorescent design on the front of the card is visible under UV light. Personalized data pertaining to the card holder is encoded in a barcode on the back, readable with a barcode reader. There are additional security design features that require specialized equipment to detect; questionable cards requiring such verification must be submitted to DMV Law Enforcement Services for their analysis.

These new cards, along with changes in how DMV will record information on card holders who have lost their licenses and been issued new ones, will make it extremely difficult for criminals to either forge Virginia driver's licenses or make use of stolen cards.

Criminal Statutes

There are ten statutes in the Code of Virginia that deal with false identification documents or driver's licenses, containing over thirty offenses.⁷ There is considerable overlap between the offenses; in practical terms, a criminal who obtains a false identification card likely will have committed more than one violation of the law. The crimes are not laid out in a systematic way. Some of the offenses cover only driver's licenses, while others include identification cards, and still others include other documents issued by DMV, such as vehicle registrations. In part this is due to the broad language used in some of the statutes.

For instance, Virginia Code § 46.2-105.1 is a statute aimed primarily at people who obtain driving privileges illegally; subdivisions (A)(2) through (A)(5) criminalize cheating on the DMV written driver's exam. However, subdivision (A)(1), which makes it illegal to procure a license through fraud, could probably be used when an applicant provides false information to DMV in order to obtain a driver's license in another person's name. Because of the exact wording, though, the statute could not be used if someone provided false information to DMV to obtain an identification card. This should not necessarily be seen as an error in the drafting of the statute. Rather, it demonstrates how the broad language used in a statute intended for cheating on the DMV test could also be used in at least some instances when someone obtains a false driver's license.

Two statutes explicitly criminalize the use of false identification cards by persons under the age of twenty-one to purchase alcohol. Virginia Code § 4.1-305(B) is a Class 1 misdemeanor, with either a mandatory minimum \$500 fine, or 50 hours of community service. In addition, the defendant's driver's license shall be suspended for a period of six months to one year.⁸ Virginia Code § 46.2-347 is a Class 3 misdemeanor, with a suspension of driver's license for thirty days to one year.

⁷ Determining an exact number depends upon how one treats closely related offenses. For example, Virginia Code § 46.2-105.1(A) makes it a crime to "procure, or assist another to procure, through theft, fraud, or other illegal means, a certificate, license, or permit, from the Department of Motor Vehicles." Depending upon how one defines an "offense," this language could be seen as creating one offense, or two, or six, or even more, if procuring a certificate is viewed as a distinct offense from procuring a license or permit.

⁸ If the offender is a juvenile, his driving privileges are handled pursuant to Va. Code § 16.1-278.9.

Two additional statutes explicitly mention an intent to falsify one's age in connection with false identification documents. Virginia Code § 18.2-204.2 makes the manufacture, sale, or advertising for sale of any false identification card a Class 1 misdemeanor, while the possession of such a card is a Class 2 misdemeanor. Subsection D of this statute provides that "[t]he provisions of this section shall not preclude an election to prosecute under § 18.2-172 [the general forgery statute], except to prosecute for forgery or uttering of such license or identification card...as proof of age."⁹ Virginia Code § 46.2-105.2 criminalizes obtaining, possessing, or using a Virginia driver's license, identification card, vehicle registration or title, or other DMV document if not legally entitled thereto. A violation is a Class 2 misdemeanor if the obtaining or possession of the document or card was "for the purpose of engaging in any age-limited activity, including but not limited to obtaining, possessing, or consuming alcoholic beverages;" otherwise, it is a Class 6 felony.

There are an additional four statutes in Title 46.2 of the Code of Virginia that relate to false driver's licenses and identification cards. Virginia Code § 46.2-105.1(A), mentioned above, criminalizes procuring, through fraud, theft, or other illegal means, a certificate, license, or permit from DMV. A violation is a Class 1 misdemeanor. Virginia Code § 46.2-345(I) criminalizes using a false name or giving false information in any application for an identification card. A violation is a Class 2 misdemeanor, unless the intent of the defendant was to purchase a firearm or commit a felony, in which case it is a Class 4 felony. Subdivision (A)(1) of Virginia Code § 46.2-346 criminalizes displaying or possessing any driver's license which is fictitious or altered, while subdivision (A)(4) criminalizes reproducing a driver's license with the intent to commit an illegal act. A violation of either of these two subdivisions is a Class 2 misdemeanor. Finally, Virginia Code § 46.2-348 criminalizes using a false or fictitious name or other false information in an application for a driver's license. A violation is a Class 2 misdemeanor; however, if the intent of the defendant was to purchase a firearm, or to establish proof of residency, it is a Class 4 felony.

The last two statutes related to false identification cards are located in Title 18.2 of the Code of Virginia. Virginia Code § 18.2-204.1 makes it a crime to obtain, possess, sell or transfer the birth certificate of another, or any document, for the purposes of establishing a false identity. A violation is a Class 1 misdemeanor; however, if the offense was committed with the intent to obtain a firearm, it is a Class 6 felony. Virginia Code § 18.2-186.3 is Virginia's identity theft statute. It contains within its provisions that criminalize obtaining identification documents in another person's name, with the intent to commit a fraud or to sell the identity information, or to avoid arrest or prosecution. If the amount of the fraud is \$200 or less, the crime is a Class 1 misdemeanor; if the amount is greater than \$200, it is a Class 6 felony; if the crime causes another person to be arrested, it is a Class 6 felony. While the main scope of the statute is not directly related to false identification cards, the broad language used could lead to a successful prosecution if a false identification card or driver's license was used for one of the listed reasons.

⁹ It should be noted that the language in subsection D would not prevent a prosecution for forgery of a government document under Va. Code § 18.2-168, even if the purpose of the identification card was only to establish a false proof of age.

Conviction Data

To determine the frequency with which these statutes are used, data was collected from the Virginia Compensation Board, which collects information on all inmates who have spent any time in a jail in the state of Virginia during each fiscal year. It was determined that in FY 2007, there were 1,795 individuals who were committed at least once to a jail in Virginia for one of the offenses involving false identification; of those, 650 individuals were found guilty of 1,014 offenses.¹⁰ It should be noted that a number of these convictions were for a violation of Virginia's identity theft statute, and may not have involved a false identification document, but rather some other item, such as a credit card. For FY 2008, there were 1,626 individuals who were committed at least once to a jail in Virginia for one of the offenses involving false identification; of those, 534 individuals were found guilty of 858 offenses.

A similar request was made to the Virginia Criminal Sentencing Commission, which maintains accurate data on all felony convictions in the Commonwealth, including those where the defendant did not receive any incarceration as part of his sentence. As with the data from the Virginia Compensation Board, a number of convictions were for identity theft, and it cannot be determined in which cases the crime involved a false identification card, versus those which did not. In FY 2007, there were 200 felony convictions possibly involving a false identification card; 35 of those convictions were very likely to have been false identification card crimes. In FY 2008, there were 240 felony convictions possibly involving a false identification card; 80 of those convictions were very likely to have been false identification card crimes.

In an attempt to gain further data, staff requested information from Virginia DMV. According to their records, there were 5 convictions for a violation of Virginia Code § 46.2-347 (use of a false driver's license to obtain alcoholic beverages) in FY 2007; no convictions in FY 2008, and 1 conviction in FY 2009. Because this crime is a Class 3 misdemeanor and does not carry any potential jail time, these convictions would not be included in any of the data received from either the Compensation Board or the Sentencing Commission.

While the readily available data is limited in scope, it does demonstrate that the various statutes related to false identification cards can be used for successful prosecutions in at least certain cases.

Requests for General Comments

Because the results of the conviction data do not indicate if Virginia's criminal statutes are well drafted or could use improvement, a general request for comments on this topic was made to local law enforcement agencies, sheriffs' offices, and Commonwealth's Attorneys. It must be emphasized that this was a general request, and was not a rigorous, methodological

¹⁰ The reason the number of people who spent time in a jail is greater than the number convicted is that the former group includes people who were arrested for one of the identification card crimes, but were never convicted. Presumably, many of them were found not guilty of the offense, or were found guilty of some other charge that did not involve a false identification. The fact that only 650 individuals were found guilty of over a thousand false identification charges illustrates the point that possessing such a document will frequently result in multiple violations of the law.

survey. When asked if false identification cards were a problem in their jurisdiction, responses from law enforcement and sheriffs were mixed; roughly half of respondents indicated that false identification cards were a problem, while the other half reported almost never encountering them. More importantly, no suggestions or comments were received as to any legislative changes that should be made to assist in the prosecution of these crimes. The number of responses received from Commonwealth's Attorney offices was not large enough for the results to meet any minimal standards for statistical validity. It should be noted that the Bureau of Law Enforcement for the Virginia Department of Alcoholic Beverage Control specially contacted the Crime Commission. According to the Director, false identification documents are still a significant problem in Virginia, and the manufacture and use of such cards is not declining.

IV. Conclusion

The available conviction data and anecdotal evidence suggest that the use of false identification cards in Virginia does occur on a regular basis. While it is difficult to quantify the problem, no evidence was gathered to suggest Virginia's criminal justice system is inadequate when it comes to prosecuting those individuals who are caught manufacturing, possessing, or attempting to obtain a false identification card. The introduction this year of a completely redesigned, and highly advanced, driver's license may prove to have an ameliorative effect on the problem here in the Commonwealth. As these new licenses are phased in over the next several years, it would be helpful to monitor the available data to ascertain whether the frequency of these types of crimes begins to diminish.

V. Acknowledgements

The Virginia State Crime Commission extends its appreciation to the following agencies and individuals for their assistance and cooperation on this study:

With special thanks to:

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Anne Wilmoth, Chief Information Officer

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Donald Boswell, Ph.D., Director of Law Enforcement Services

Karen Chappell, Deputy Commissioner

Virginia Criminal Sentencing Commission

Meredith Farrar-Owens, Associate Director

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