



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2631

(Patrons – Bell et al.)

Date Submitted: 1/5/2005

LD #: 05-7933134

Topic: Use of computer to commit fraud or gather unauthorized information

Proposed Change:

The proposal amends §§ 18.2-152.3 and 18.2-152.5, and adds § 18.2-152.5:1, relating to computer fraud and using a computer to examine or gather unauthorized information. Amendments to § 18.2-152.3 streamline existing language defining computer fraud. Proposed changes to § 18.2-152.5 elevate the punishment for invasion of privacy by computer from a Class 1 misdemeanor to a Class 6 felony if the information is sold or distributed to another, the information is used in the commission of a crime, or it is the offender's second or subsequent conviction for this offense. The proposal also defines new computer-related crimes. Under the proposed § 18.2-152.5:1, use of a computer to fraudulently gather identifying information as defined in clauses (iii) through (xii) of § 18.2-186.3(C) (except by a law-enforcement officer acting in an official capacity) is a Class 6 felony; the proposal elevates this offense to a Class 5 felony if the information is sold or distributed to another or the information is used in the commission of another crime.

Analysis:

According to the fiscal year (FY) 2003 and FY2004 Local Inmate Data System (LIDS), four persons held pre- or post-trial in jail were convicted under misdemeanor provisions affected by the proposal. All were sentenced to a local-responsible (jail) term with a median sentence of four months.

Based on FY2003 and FY2004 LIDS data, there was one person convicted of a felony under § 18.2-152.3(3) for using a computer to embezzle \$200 or more. That person was sentenced to six months in jail.

Impact of Proposed Legislation:

Because the proposal defines new felonies and increases the penalty for an existing crime in certain circumstances, the proposed legislation may increase the correctional bed space needs of the Commonwealth. Few offenders have been convicted of misdemeanor crimes under existing provisions over a recent two-year period; therefore, the impact of increasing these crimes to a felony under certain conditions is likely to be small. The proposal, however, defines new crimes in § 18.2-152.5:1. The number of incidents affected by this aspect of the proposal and the potential increase in prosecutions cannot be estimated with available data.

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

If adopted, the new felony crimes would not be covered by Virginia's sentencing guidelines as the primary (or most serious) offense in a sentencing event. Nonetheless, convictions for the proposed crimes could augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

phish03_7933