



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1163

(Patrons – Stolle et al.)

Date Submitted: 1/4/2005

LD #: 05-7935134

Topic: Redefinition, modernization and streamlining of computer laws

Proposed Change:

The proposal amends §§ 18.2-152.2 through 18.2-152.8, 18.2-152.12, 18.2-152.14 and 19.2-8, adds §§ 18-152.5:1, 18.2-152.6:1, 18.2-152.17, 19.2-249.2, and repeals §§ 18-152.9 and 18.2-152.10 to redefine, modernize and streamline the laws governing computer crimes. In § 18.2-152.2, every definition has been updated except “computer network” (dropped for being a redundant form of the newly defined “computer”), “computer data” and “computer program” (both subsumed in a newly defined term of “computer information”). Except as noted below, the remaining changes to existing statutes were primarily made to utilize the new definitions.

The more substantive changes made by the proposal are:

Statute	Current	Proposed
§ 18.2-152.4 (Computer trespass)	Prohibits unauthorized use to: a) remove or disable information, b) cause a computer malfunction, c) erase data or programs, d) create/alter financial instrument or electronically transfer funds, e) cause injury to property, f) copy anything on the computer. Penalty: a) damage less than \$2,500 and non-malicious - Class 1 misdemeanor b) damage of \$2,500 or more, or damage was result of malicious act - Class 6 felony	Prohibits unauthorized use with malicious intent to: a) commit any of the acts currently specified in this statute, b) install software without authorization, c) disable ability of computer to share or transmit information, d) maliciously obtain any computer information without authority through direct use of computer. Penalty: a) damage less than \$1,000 and non-malicious - Class 1 misdemeanor b) damage of \$1,000 or more - Class 6 felony
§ 18.2-152.5 (Computer invasion of privacy)	Prohibits use of computer to intentionally examine employment, salary, credit, or any other financial or personal information. Penalty: Class 1 misdemeanor	Prohibits use of computer to intentionally examine financial or other “identifying information” as defined by § 18.2-186.3(C). Penalty: a) Class 1 misdemeanor for 1 st violation b) Class 6 felony for subsequent violation c) Class 6 felony if information is sold or distributed to another d) Class 6 felony if information is used in commission of a crime
§ 19.2-8 (Limiting prosecution)	Currently in § 18.2-152.9	Moved to Title 19.2, repealing old statute

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.

Statute	Current	Proposed
§ 19.2-249.2 (Venue)	Currently in § 18.2-152.10	Moved to Title 19.2, repealing old statute

The proposal also defines new computer-related crimes and penalties.

- Under the proposed § 18.2-152.5:1, the use of a computer to fraudulently gather, access, or record identifying information defined in § 18.2-186.3(C) by anyone other than a law-enforcement officer acting in an official capacity is punishable as a Class 6 felony. If that information is sold or distributed to another or the person uses the information in the commission of another crime, it is punishable as a Class 5 felony.
- Under the proposed § 18.2-152.6:1, the use of a computer to circumvent computer security is punishable as a Class 1 misdemeanor. A subsequent conviction for the same crime is a Class 6 felony; a violation during the commission of a felony is also punishable as a Class 6 felony.
- Under proposed § 18.2-152.17, any felony conviction under the Computer Crimes Act has an additional penalty of a mandatory, minimum fine of \$1,000.

Analysis:

According to the fiscal year (FY) 2003 and FY2004 Local Inmate Data System (LIDS) data, 10 persons held pre- post-trial in jail were convicted of misdemeanor crimes affected by the proposal. All were sentenced to a local-responsible (jail) term with a median sentence of 30 days. None were convicted under sections of the *Code* that will be significantly affected by the proposal.

In the same two-year period, one person held in jail was convicted of § 18.2-152.3(3) involving the use of a computer to embezzle \$200 or more. That person was sentenced to six months in jail.

Impact of Proposed Legislation:

While several aspects of the proposed legislation are not expected to affect correctional bed space, there are elements of the proposal that may increase the bed space needs of the Commonwealth. Many of the proposed changes are not expected to affect either the number of prosecutions or judicial sentencing practices; for these elements, no impact on correctional bed space is anticipated. The proposal, however, expands § 18.2-152.4, adds felony penalties to § 18.2-152.5, and defines new crimes in §§ 18.2-152.5:1 and 18.2-152.6:1; the impact of these elements of the proposal cannot be determined. In addition, the proposed amendments to § 18.2-152.4 redefine those crimes by requiring malicious intent, while simultaneously lowering the threshold for felony punishment (based on damages incurred) from \$2,500 to \$1,000; these would have offsetting impacts on correctional bed space needs, although the magnitude cannot be determined.

If the proposed legislation is adopted, Virginia's sentencing guidelines would not cover the new felony offenses, however, any of the criminal aspects of the proposal may be used to augment the sentencing guidelines recommendation if the primary offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

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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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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