



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1207

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Albo)

LD #: 10104690

Date: 1/28/2010

Topic: Computer trespass

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends subdivision A 8 of § 18.2-152.4 to also prohibit the installation of computer hardware or software that records screenshots in the form of digital images or video on a computer without the computer owner's authorization. Currently, this subdivision only prohibits the installation of computer software that records keystrokes made on someone else's computer without authorization. The proposal also amends subsection C of § 18.2-152.4 to state that no part of this section may be construed to interfere with an electronic mail service provider's ability to implement measures to prevent the transmission of unsolicited electronic mail; the current language refers only to Virginia-based electronic mail service providers.

Under the proposal, § 18.2-152.4 shall not apply to Internet or other service providers with an established business relationship with the computer owner when such provider is operating within the scope of its employment or contract with the owner. Nothing in this section shall apply to (i) any monitoring of a subscriber's Internet connection or service by a telecommunications carrier or provider of information services for network security purposes; (ii) the provision of any service to a subscriber for diagnostics, technical support, maintenance or authorized updates of software or system firmware; or (iii) the detection or prevention of unauthorized, fraudulent or other illegal activities in connection with a computer network or service.

Under current *Code*, computer trespass under § 18.2-152.4 is a Class 1 misdemeanor if the crime results in property damage of less than \$1,000 and a Class 6 felony if property damage is valued at \$1,000 or more; however, violations of subdivision A 8 of § 18.2-152.4 (installing "spyware" or "keyloggers") are Class 6 felonies.

The General Assembly has amended § 18.2-152.4 several times. In the 2002 session, the General Assembly made it explicit that the computer trespass statutes do not apply when minors are being monitored by their parents or guardians. In the 2003 session, non-malicious damage due to computer trespass valued at less than \$2,500 was elevated from a Class 3 to a Class 1 misdemeanor, and crimes involving falsifying or forging electronic mail were moved into a new statute on computer spam. The 2005 amendments were part of the Joint Commission on Technology and Science's redefinition, modernization and streamlining of computer laws; although many of the changes were technical, the definition of computer trespass was changed from "unauthorized use" to an act involving "malicious intent" and the threshold for the Class 6 felony computer trespass was reduced from damage of \$2,500 to damage of \$1,000. The 2007 General Assembly created three new computer trespass crimes (1) making it a Class 6 felony to install, or cause to be installed, computer software that records without authorization the keystrokes made on another's computer, (2) making it a Class 6 felony to install that type of unauthorized software on more than five computers, and (3) making it a Class 6 felony to install, or cause to be installed, software for the purpose of taking over a computer in order to cause damage to another computer or render it unable to communicate with other devices.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2008 and 2009, there were no felony convictions under subdivision A 8 of the existing § 18.2-152.4.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the crime of computer trespass to include the unauthorized capture of screenshots from another person's computer. The proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated. Available data, however, reveal no felony convictions under subdivision A 8 of the existing § 18.2-152.4 during a recent two-year period. While the impact of the proposal on prison bed space cannot be quantified, it is likely to be small.

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs. While the magnitude of the impact cannot be determined, it is likely to be small.

Adult community corrections programs. The proposal's impact on the need for adult community corrections resources cannot be determined but is likely to be small.

Virginia's sentencing guidelines. Convictions under § 18.2-152.4 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for these crimes may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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