



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1173 (Patron – Obenshain)

LD#: 13101033

Date: 11/29/2012

Topic: Computer trespass

Fiscal Impact Summary:

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

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-152.4 to expand the crime of computer trespass to include acts that are not committed with malicious intent but are committed without authority of the computer's owner; such non-malicious acts would be punishable as Class 1 misdemeanors. The proposal also increases the penalty for computer trespass committed with malicious intent from a Class 1 misdemeanor to a Class 6 felony.

Currently, § 18.2-152.4 specifies that computer trespass committed with malicious intent is a Class 1 misdemeanor or, under certain circumstances, a Class 6 felony. Computer trespass is a Class 6 felony if there is damage to property valued at \$1,000 or more; if the offender installs, or causes to be installed, computer software on more than five computers; or if the offender installs, or causes to be installed, computer software that records keystrokes made on some else's computer.

The General Assembly has amended § 18.2-152.4 several times. In 2002, 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. Several amendments were made in 2005 as 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. In 2007, the General Assembly expanded misdemeanor computer trespass to include the installation of software for the purpose of taking over a computer in order to cause damage or render it unable to communicate with other devices. The 2007 General Assembly also created two new crimes by making it a Class 6 felony to install software that records the keystrokes made on another's computer or to install software in violation of this provision on more than five computers.

Analysis:

According to the General District Court Automated Information System (CAIS) for fiscal year (FY) 2011 and FY2012, 17 offenders were convicted of a misdemeanor under § 18.2-152.4 for computer trespass. None of these offenders were given an active jail sentence to serve.

Based on FY2011 and FY2012 CAIS data, an additional five offenders were convicted of misdemeanor computer trespass in circuit court. Three of these offenders had originally been charged with felony offenses, including grand larceny, computer fraud, and extortion, but the charges were reduced to misdemeanor computer trespass. The other two offenders were charged with misdemeanor computer trespass in addition to a felony offense. Overall, one of the five offenders was sentenced to serve a total of two months in jail (one month each on two counts) for computer trespass, while the remaining four offenders were not given an active sentence to serve for this crime. Data indicate that no offenders were convicted of a felony violation of § 18.2-152.4 in circuit court between FY2011 and FY2012.

The 22 offenders described above were convicted under the existing computer trespass provision, which requires malicious intent. Under the proposal, these offenders would likely be eligible for felony prosecution. The number of incidents involving non-malicious, but unauthorized, acts (which would be defined as misdemeanor computer trespass under the proposal) is not known.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the crime of computer trespass and increasing the penalty for malicious acts, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. While 22 offenders convicted under existing law in a recent two-year period would likely be eligible for felony prosecution under the proposal, the potential impact on sentences for these offenders cannot be estimated, as there have not been any felony convictions for computer trespass under existing law during the time period analyzed. Therefore, the magnitude of the impact on state-responsible bed space cannot be estimated.

Local adult correctional facilities. The proposal could also have an impact on local-responsible (jail) bed space needs, largely due to the proposed expansion of misdemeanor computer trespass to cover non-malicious, but unauthorized, acts. The number of additional misdemeanor convictions that may result from the proposed expansion of the provision cannot be determined with existing data sources.

Adult community corrections resources. Because the proposal could result in additional felony and misdemeanor convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. However, the potential impact on state and local community corrections programs cannot be determined.

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. The Department of Juvenile Justice reports this proposal would have a limited impact on bed space needs for juvenile correctional centers; however, that impact cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space will be limited; however, the exact impact cannot be determined.

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 3 of the Acts of Assembly of 2012, Special Session I, 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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