Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1986

Amendment in the Nature of a Substitute

(***Patron Prior to Substitute – Bell, John J.)***

LD#: 17104626 **Date:** 1/23/2017

Topic: Computer trespass

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** None ($0)
- **Local Adult Correctional Facilities:** Cannot be determined
- **Adult Community Corrections Programs:** Cannot be determined

- **Juvenile Direct Care:** Cannot be determined*
- **Juvenile Detention Facilities:** Cannot be determined*

* Provided by the Department of Juvenile Justice

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 through intentionally deceptive means and without authority. These crimes would be punishable as Class 1 misdemeanors. The proposal clarifies that the felony penalties defined in § 18.2-152.4(B) would continue to apply in limited circumstances that involve malicious intent.

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 someone else's computer.

Analysis:

According to the General District Court Case Management System (CMS) for fiscal year (FY) 2015 and FY2016, 13 offenders were convicted of a misdemeanor under § 18.2-152.4 for computer trespass. The majority (61.5%) of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining 38.5% were sentenced to a local-responsible (jail) term, with a median sentence length of two months. According to Circuit Court CMS data for FY2015 and FY2016, two offenders were convicted of a Class 6 felony under § 18.2-152.4 for computer trespass. The computer offense was not the primary, or most serious, offense in either of the cases.

The offenders described above were convicted under the existing computer trespass provision, which requires malicious intent. The number of incidents involving non-malicious, but unauthorized, acts committed through intentionally deceptive means (which would be defined as misdemeanor computer trespass under the proposal) is not known.

Impact of Proposed Legislation:

State adult correctional facilities. Since the proposal clarifies that the felony penalties described in § 18.2-152.4(B) would continue to apply only in limited circumstances that involve malicious intent, the proposal is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. By expanding misdemeanor computer trespass to include non-malicious, but unauthorized, acts, the proposal may increase the local-responsible (jail) bed space needs of the Commonwealth. However, 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 misdemeanor convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for local community corrections resources. However, the potential impact on local community corrections programs cannot be determined.

Virginia's sentencing guidelines. Convictions under § 18.2-152.4 are not covered by the sentencing guidelines when these offenses are 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 direct care. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $0 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.

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