



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 922

(Patron – Mason)

LD#: 16101923

Date: 12/15/2015

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\*\*

\*\* Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the 2015 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

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.

Under the proposed modifications to § 18.2-152.4, any person who commits computer trespass while targeting a computer that is exclusively for the use of, or used by or for, the Commonwealth of Virginia or a local government (or any department or agency thereof) would be guilty of a Class 6 felony. The proposal also increases the penalty for computer trespass to a Class 6 felony if the offense is committed while targeting a computer that is exclusively for the use of, or used by or for, oil, electric, gas, sewer, wastewater, or water service to the public.

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. 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.

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**Analysis:**

According to the General District Court Case Management System (CMS) for fiscal year (FY) 2014 and FY2015, ten offenders were convicted of a misdemeanor under § 18.2-152.4 for computer trespass. Six of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining four offenders were sentenced to a local-responsible (jail) term, with a median sentence length of 2.5 months. According to Circuit Court CMS data for FY2010-FY2015, 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.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it increases the penalty for computer trespass from a Class 1 misdemeanor to a Class 6 felony if certain conditions are met, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** The proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

**Adult community corrections programs.** Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

**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 correctional centers.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) 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.

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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; therefore, Chapter 665 of the 2015 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**