



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 384 (Patron – Ware, R.L.)

ID#: 08-8035780

Date: 12/5/2007

Topic: Computer trespass

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **State Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends § 18.2-152.4 to remove the requirement that computer trespass be committed with “malicious intent” for this provision to apply. Currently, § 18.2-152.4 defines several computer trespass crimes that are predicated on malicious intent; the proposal would only require that the act be done “without authority and the owner’s consent.” Although, § 18.2-152.12 currently allows civil relief for many of the computer trespass crimes, regardless of whether those crimes were committed with or without malicious intent, the proposal removes any potential conflict between the two statutes.

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 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 1 misdemeanor 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. These new crimes became effective July 1, 2007.

Analysis:

Analysis of fiscal year (FY) 2006 and FY2007 Court Automated Information System (CAIS) data revealed no cases of felony computer trespassing in the circuit court data and 12 cases of misdemeanor

computer trespassing in the general district court data. Except for one case, any time imposed was also suspended; in the remaining case, the sentence was two days.

According to calendar year (CY) 2005 and CY2006 Local Inmate Data System (LIDS) information, one offender was convicted of felony computer trespass and was sentenced to one year in prison.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of computer trespass to encompass any unauthorized use, the proposal could result in an increase in the number of offenders convicted of a Class 6 felony for violating these provisions. Although data reveal only one conviction under this statute, data are not yet available for the new computer trespass crimes that became effective on July 1, 2007. The number of additional felony convictions that may result from the proposal in the future cannot be estimated; therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. Similarly, the impact on the local-responsible (jail) bed space needs cannot be quantified.

Adult community corrections resources. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal 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 as the primary (or most serious) offense. A conviction under one of these provisions, however, could augment the guidelines recommendation if the most serious offense at sentencing is a covered offense. No adjustment to the sentencing 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. The Department of Juvenile Justice (DJJ) reports that 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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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