



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 920

(Patron – Bell)

LD #: 10102946

Date: 1/8/2010

Topic: Definitions relating to the Computer Crimes Act

#### 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:**  
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 § 18.2-152.2 to expand and clarify the definitions of computer and computer network for purposes of the Computer Crimes Act (Article 7.1 of Chapter 5 of Title 18.2). "Computer" would include cell phones and other wireless telecommunications devices. "Computer network" would explicitly include wired or wireless networks. The proposal therefore affects numerous crimes described in §§ 18.2-152.3 through 18.2-152.15 of Article 7.1.

The Computer Crimes Act covers crimes including computer fraud (§§ 18.2-152.3 and 18.2-152.14), computer trespass (§ 18.2-152.4), and computer invasion of privacy (§§ 18.2-152.5 and 18.2-152.5:1). Although many violations are punishable as Class 1 misdemeanors, those involving property worth at least \$200 or damage of \$1,000 or more are generally felony offenses. For example, computer fraud under § 18.2-152.3 involving less than \$200 worth of property or services is a Class 1 misdemeanor; however, computer fraud involving at least \$200 worth of property or services is a Class 5 felony. Computer trespass violations under § 18.2-152.4 are Class 6 felonies if they result in damage worth at least \$1,000 or involve the unlawful installation of software on more than five computers. Several other offenses, including computer invasion of privacy and unlawful or malicious computer use with intent to cause physical injury, are also punishable as felonies.

The General Assembly has amended various sections of the Computer Crimes Act frequently over the years. The 2005 General Assembly created three new felony computer invasion of privacy crimes (1) making a second or subsequent offense a Class 6 felony, (2) making it a Class 6 felony to sell or distribute unlawfully obtained identifying information, and (3) making it a Class 6 felony to use such information in the commission of another crime. The 2005 General Assembly also adopted § 18.2-152.5:1 making it a Class 6 felony to unlawfully use a computer to gather identifying information; sale or distribution of such information or use of such information in the commission of another crime was made a Class 5 felony. 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 2005 amendments were part of the Joint Commission on Technology and Science's redefinition, modernization and streamlining of computer laws. 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. These new crimes became effective July 1, 2007.

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**Analysis:**

According to the Circuit Court Automated Information System (CAIS) for fiscal years (FY) 2008 and FY2009, twelve offenders were sentenced for Class 1 misdemeanor violations of the Computer Crimes Act as their primary (most serious) offense at sentencing. Six of these offenders (50%) were convicted of harassment by computer (§ 18.2-152.7:1) and three offenders (25%) were convicted of unauthorized removal of computer data or programs (§ 18.2-152.4(A,1)). Two offenders were convicted of using a computer to convert another's property worth less than \$200 (§ 18.2-152.3(3)) and one offender was convicted of computer invasion of privacy to examine employment or credit information without authorization (§ 18.2-152.5(A)). Eight of the twelve offenders (67%) were sentenced to probation and the remaining four offenders (33%) received local-responsible (jail) terms with a median sentence of one month.

The CAIS data also revealed that five offenders were sentenced for felony violations of the Computer Crimes Act as their primary offense. Four offenders were convicted of Class 5 felonies under § 18.2-152.3; two for using a computer to embezzle at least \$200, one for unauthorized use of a computer to obtain property or services worth at least \$200, and one for using a computer to convert another's property worth at least \$200. The remaining offender was convicted of unlawfully altering or erasing computer data or programs worth at least \$1,000, a Class 6 felony under § 18.2-152.4(A,3). All five offenders were sentenced to probation without an active term of incarceration.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal expands and clarifies the definitions of computer and computer network for purposes of the Computer Crimes Act. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional convictions that may result from the proposal cannot be estimated. Therefore, the impact of the proposal cannot be quantified.

**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.** The proposal's impact on the need for adult community corrections resources cannot be determined.

**Virginia's sentencing guidelines.** Convictions under the Computer Crimes Act 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.

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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 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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