Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1090
(Patron – Sturtevant)

LD#: 17101150 **Date:** 1/4/2017

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 Direct Care:** 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 780 of the 2016 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 §§ 18.2-152.4 and 18.2-152.5 of the *Code of Virginia* to expand the crimes of computer trespassing and computer invasion of privacy.

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 places, etc., computer software or a computer program for the purpose of taking control of or restricting access to a computer, associated network, or data and demands money or other compensation to restore control or access to the computer, etc., would be guilty of a Class 5 felony.

The proposal also modifies § 18.2-152.5 to expand computer invasion of privacy to include acts in which a person, without authority, examines the medical information of another. Computer invasion of privacy is a Class 1 misdemeanor; however, if the offender sells or distributes the information of another, uses the information in the commission of another crime, or commits a second or subsequent offense under this provision, it is a Class 6 felony.

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.

General District Court CMS data for FY2015 and FY2016 indicate that four offenders were convicted of a misdemeanor under § 18.2-152.5 for computer invasion of privacy. Two of these offenders were sentenced to local-responsible (jail) terms of two months and eighteen months, respectively. The remaining two offenders did not receive an active term of incarceration to serve after sentencing. Circuit Court CMS data for the same two-year period revealed that one offender was convicted of a Class 6 felony under § 18.2-152.5 for computer invasion of privacy. The computer offense was not the primary offense in this case.

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new Class 5 felony offense related to computer trespass and expanding the applicability of computer invasion of privacy provisions, 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 that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may 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 and 18.2-152.5 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, 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 780 of the 2016 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.

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