



**Computer Crimes Advisory Committee  
Delegate Kenneth R. Plum, Chairman  
Monday, July 1, 2013 10:00 a.m.  
House Room C, General Assembly Building**

The JCOTS Computer Crimes Advisory Committee held its first meeting of the 2013 Interim on July 1, 2013. Delegate Plum, chairman of the Committee, called the meeting to order. The Advisory Committee was convened to review two sets of bills referred to JCOTS by the 2013 Session of the General Assembly. HB 2050 (Webert) and SB 1030 (Reeves) address search and seizure of computers, and SB 1173 (Obenshain) addresses computer trespass. Delegate Plum provided the committee with background on how JCOTS conducts its work, and invited the members to introduce themselves.

After introductions, Delegate Webert presented his HB 2050 to the committee. The proposed bill, introduced on behalf of the Virginia Department of State Police, attempts to address the search and seizure of computers. He said that police often need a separate warrant to search a computer in a jurisdiction other than where it was seized. The bill originally also included language related to search of "computer networks" but Delegate Webert acknowledged that this language would require some work because it led to some proprietary issues.

Captain Kirk Marlowe, Division Commander of the High Tech Crimes Division of the Virginia Department of State Police, provided the Committee with some additional background about search and seizure of computers. He said that the state has three computer labs in the state at which seized computers are searched and analyzed. The confusion arises as to whether looking into the contents of a computer is actually a second search after the initial seizure of the computer itself. He indicated that different jurisdictions treat the issue differently. The intent of the bill was not to expand the scope of a warrant, but to clarify the issue since it is being treated differently around the state. Some courts have ruled that they do not have the authority to issue a warrant for a search (the review of the computer contents in another jurisdiction). Other courts have said that it is okay to search the computer in another jurisdiction, so long as it is done within 15 days. State Police, however, does not consider search of the computer contents to be a separate search, as there is not always the ability to search the computer at the scene of the seizure. Captain Marlowe also indicated that State Police does not see the analysis of the computer contents as being any different than sending off any other form of evidence -- such as blood -- to a lab for analysis.

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The Committee discussed the issue thoroughly. It was suggested that only the second sentence of the new language, stating that a search of the contents of the computer may be done at any location, was necessary to accomplish the purpose of the bill. Furthermore, it was discussed that the word "search" should be changed to "examination," and that the language should not be specific to examination of computer contents. It was also agreed that the bill should not contain any references to "computer networks." Delegate Plum directed staff to work on a revised draft for the next meeting, and encouraged members of the Committee to forward additional suggestions to staff.

At the conclusion of the discussion regarding search and seizure of computers, staff provided an overview of SB 1173 (Obenshain). The bill was introduced at the request of the Office of the Attorney General, and would amend the standard used for establishing the crime of computer trespass so that it made certain actions a crime if done "without authority." Current law requires the prosecution to establish that those acts were done "with malicious intent" in order to establish that a crime was committed. Gene Fishel, chief of the Computer Crimes Division at the Office of the Attorney General, said that in prosecuting computer crimes, the "malicious intent" standard has rendered the statute ineffective. "Malicious intent" is one of the highest legal standards, and is very difficult to prove.

Staff provided some background on computer trespass law. The current law -- including the malicious intent standard -- was the recommendation of a lengthy study conducted by JCOTS and the Virginia State Crime Commission in 2004 related to computer crimes generally. The recommendation came from a work group consisting of prosecutors, defense attorneys, and technology experts, and has been largely unchanged since adopted by the General Assembly.

The committee discussed the proposal. Mr. Fishel indicated that he was aware of the concerns with the new language, and wondered if the Committee might be able to craft a standard that fell in between "without authority" and "malicious intent." A representative from VITA agreed that some intent was needed in the statute, as most of the activities that could be considered criminal in the statute could be committed accidentally. Delegate Plum asked the members of the Committee to send comments regarding the bill to staff, and invited the Office of the Attorney General to present a new proposal at the next meeting, scheduled for Wednesday, August 7.

The meeting was adjourned.

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