



Computer Crimes Definitions Advisory Committee
Monday, November 1, 2010 10:00 a.m.
General Assembly Building, 6th Floor, Speaker's Conference Room

- Call to order

Senator Janet D. Howell called the Advisory Committee meeting to order, and each of the Committee members and Staff introduced themselves.

- Review of HB 920 and revised draft

JCOTS Staff briefly reviewed and summarized the issues that Staff had been asked to address at the previous Advisory Committee meeting. Included among those issues was the question of whether “wireless telecommunications devices” should be specifically included within the definition of “computer” in the Computer Crimes Act, and if it were included, what unintended consequences might result. At the direction of Senator Howell, JCOTS Staff worked with Stewart Petoe, Director of Legal Affairs at the Virginia State Crime Commission.

Specifically, those unintended consequences included the possibility of whether the inclusion of one specific form of technology would lead to the necessary inclusion of other specific forms of technology within the Computer Crimes Act. As it was originally intended, the Computer Crimes Act of 2004 was always to be neutral as to specific technologies. Secondly, JCOTS and Crime Commission Staff were concerned that “wireless telecommunications devices” could potentially be interpreted to include all telephonic devices, directly contravening Delegate Bell’s purpose behind HB 920, as well as the policy decisions made in 2004 in drafting the definition. Thirdly, Staff and the Crime Commission were concerned about the possibility that a currently non-existent wire fraud provision would be effectively created through the Computer Crime Act’s prohibition against computer fraud if cell phones were included in the definition of “computer.”

In order to adhere to Delegate Bell's motivation behind HB 920, and to steer clear of these unintended consequences, Staff drafted an amendment to § 18.2-427, which currently prohibits the use of profane or threatening language over public airways, as well as by telephone. This section of the Virginia Code falls outside the Computer Crimes Act, so unintended consequences to the entire Act could be avoided. The amendment would track similar language as is used in § 18.2-60, relating to threats of death or bodily harm, and would use language similar to that in HB 920.

First, the word "message" would be amended to use the same language as § 18.2-60's "communication producing a visual or electronic message." Second, the word "telephone" would be amended to use Delegate Bell's "cellular telephone or other wireless telecommunications device" from HB 920. These two changes would avoid the risk of unintended consequences to the Computer Crimes Act, but would still reach Delegate Bell's motivation for HB 920.

Following Staff's review of the proposed draft, Delegate Bell voiced his approval of the language changes. After a brief discussion, the Advisory Committee voted unanimously to recommend the proposed language for consideration by the full Joint Commission.

- Public comment

No public comments were taken.