

Fiscal Estimate Narratives

DOJ 2/15/2007

LRB Number	07-0683/1	Introduction Number	AB-0022	Estimate Type	Original
Description Seizure of a computer used in committing a child sex offense, the disposition of certain forfeited property, the use of a computer by a person convicted of a child sex offense, and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

Assembly Bill 22 expands § 973.075 to allow the State to commence a forfeiture proceeding against a computer used in the commission of a serious child sex offense. The bill also provides protections for innocent owners and innocent security interest holders. However, while the provisions relating to protection for an innocent security interest holder in Section 13 of the bill refer to “forfeited property”, the provisions relating to protection for an innocent owner in Section 17 of the bill refer to “seized property.” As a result, it is possible that the procedures set forth in Section 17 of the bill could be held to apply to all computers used in the commission of a serious child sex offense and seized by law enforcement regardless of whether a forfeiture action was ever commenced involving the seized computer.

Under Section 17 of AB 22, if the seized property is a computer used in the commission of a serious child sex offense, the law enforcement agency that seized the computer must return the computer to its owner within 30 days of seizure, unless all of the following occur first: 1) within fifteen (15) days of seizure the agency petitions the court for permission to retain the computer; 2) the agency provides notice of the petition to each owner of the location from which the computer was seized and any other person claiming to be an owner of the computer; and 3) the court determines there is probable cause to believe that each owner knew that the computer was being used for the illicit purpose. The court is required to make this determination within 30 days of the seizure. The agency bears the burden of proof at that hearing. If the agency cannot prove that all owners knew of the illicit use of the computer, it must be returned to the owner. Even if the agency prevails at that hearing, persons claiming a right to possess that computer can seek to have it returned under § 968.20(1).

This proposed procedure effectively requires that the law enforcement agency do all of the following within 15 days of seizure: file a petition to retain the computer, identify all persons or entities with an ownership or security interest in the computer and serve them with the petition, investigate the knowledge of each owner as to the illicit use of the computer. It also requires the court to conduct a hearing not later than 30 days after the seizure. All of this is required even when no owner is actually seeking its return or when the only person with an ownership interest is the suspect. The focus of law enforcement will be diverted almost immediately from investigating the suspect to investigating the knowledge of the owners and developing probable cause to support retention of the computer. In addition, because the agency’s ability to retain the computer will be uncertain prior to the hearing, it will have to work to analyze and copy the contents of that computer prior to the hearing.

AB 22 also requires the law enforcement agency to purge all contraband data from the computer as well as any data that was used in the commission of a serious child sex offense or that the agency believes was compiled for the purpose of committing a serious child sex crime before returning it to an owner or otherwise disposing of it. As a result, law enforcement agencies will be copying the data from those computers and cleansing them of contraband or other suspect data within the 30-day time frame. Not only will forensic computer analysts be analyzing computers, but they will be investing time to copy and purge content.

In addition to the burden imposed on computer forensic analysts, the copying and purge requirements of AB 22 would seriously compromise the ability of the state to prosecute some of these serious child sex crimes. AB 22 will require the state to purge contraband images or content from a computer and return the original storage medium for that data to the innocent owner. Under the bill, the state is authorized to make a copy of the original data and retain that copy. It is possible that such a copy of that data would be inadmissible in court under the applicable rules of evidence if the original data were destroyed and unavailable for comparison. Ordinarily, the state has an obligation to preserve original evidence in order to protect the right of the defendant to review, analyzed, and challenge that evidence, and in order for the court to assure that any copy offered as evidence is actually a true and correct copy of the original. Even if admissible, defendants might persuade judges to allow them to argue to the jury that the evidence has been compromised.

The Department of Justice's Internet Crimes Against Children (ICAC) Task Force currently analyzes computers and other electronic devices suspected of being used in offenses considered a serious child sex offense under AB 22. Last year, the ICAC Task Force averaged 13 new cases a month and the average case included 4 items of media (hard drives, cds, camera cards, etc.) for analysis. Due to newer hard drives having increased storage capacity, analysis is more time consuming, taking nearly 3 weeks for the average case. One case submitted several months ago involves 52 hard drives and is still being worked by an analyst.

The ICAC Task Force does not have the staff necessary to analyze, copy and purge data of every computer it acquires, and identify and investigate all owners of seized computers within 30 days of seizure. The task force would need 8 additional computer forensic analysts, 8 analyst computers, increased server capacity, and physical space to conduct forensic examinations on its current caseload of seized computers while conforming to the procedural requirements set forth in AB 22. Even then, it will be difficult or impossible to analyze some cases involving more data than the average case within this time, even with additional analysts.

First Year Costs:

Staff:

8 Computer Analysts @ \$24,536 \$196,290
Fringe Benefits @ \$9,567 \$ 76,533
One-time training @ \$15,000 \$120,000
Total Staff \$392,823

Supplies/Services:

One-time Server Space/Duplicator \$68,000
One-time Workstation/Wiring \$44,000
Miscellaneous Supplies \$49,200
Rent \$10,400
Total Supplies/Services \$171,600

Total First Year Costs \$564,423

It is also estimated that software and hardware upgrades will be necessary every 3rd year at a cost of \$41,000.

Finally, AB 22 will have a fiscal impact at the local level. The procedures proposed in AB 22 will also apply to local law enforcement agencies across the state that perform their own forensic computer analysis and to the local prosecutors who will be participating in the court proceedings outlined in the bill. It is difficult to quantify the costs to these local units, but the costs could be significant to those units that handle a number of serious child sex offenses involving computers.

Long-Range Fiscal Implications