

SENATE BILL NO. 731

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Senator Durant)

A BILL to amend and reenact § 18.2-374.1 of the Code of Virginia, relating to production, publication, sale, financing, etc. of child pornography; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-374.1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-374.1. Production, publication, sale, financing, etc., of child pornography; presumption as to age.

A. For purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, "child pornography" means sexually explicit visual material—~~which~~ that (i) utilizes or has as a subject an identifiable minor or (ii) depicts a minor in a state of nudity or engaged in sexual conduct, as those terms are defined in § 18.2-390, where such depiction is obscene as defined in § 18.2-372. An identifiable minor is a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and shall not be construed to require proof of the actual identity of the identifiable minor. For the purposes of clause (ii), the minor depicted does not have to actually exist.

For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term "sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, digital image, including such material stored in a computer's temporary Internet cache when three or more images or streaming videos are present, or similar visual representation which depicts sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, or a book, magazine or pamphlet which contains

27 such a visual representation. An undeveloped photograph or similar visual material may be sexually
28 explicit material notwithstanding that processing or other acts may be required to make its sexually explicit
29 content apparent.

30 B. A person shall be guilty of production of child pornography who:

31 1. Accosts, entices or solicits a person less than 18 years of age with intent to induce or force such
32 person to perform in or be a subject of child pornography; or

33 2. Produces or makes or attempts or prepares to produce or make child pornography; or

34 3. Who knowingly takes part in or participates in the filming, photographing, or other production
35 of child pornography by any means; or

36 4. Knowingly finances or attempts or prepares to finance child pornography.

37 5. [Repealed.]

38 B1. [Repealed.]

39 C1. Any person who violates this section, when the subject of the child pornography is a child less
40 than 15 years of age, shall be punished by not less than five years nor more than 30 years in a state
41 correctional facility. However, if the person is at least seven years older than the subject of the child
42 pornography the person shall be punished by a term of imprisonment of not less than five years nor more
43 than 30 years in a state correctional facility, five years of which shall be a mandatory minimum term of
44 imprisonment. Any person who commits a second or subsequent violation of this section where the person
45 is at least seven years older than the subject shall be punished by a term of imprisonment of not less than
46 15 years nor more than 40 years, 15 years of which shall be a mandatory minimum term of imprisonment.

47 C2. Any person who violates this section, when the subject of the child pornography is a person at
48 least 15 but less than 18 years of age, shall be punished by not less than one year nor more than 20 years
49 in a state correctional facility. However, if the person is at least seven years older than the subject of the
50 child pornography the person shall be punished by term of imprisonment of not less than three years nor
51 more than 30 years in a state correctional facility, three years of which shall be a mandatory minimum
52 term of imprisonment. Any person who commits a second or subsequent violation of this section when he

53 is at least seven years older than the subject shall be punished by a term of imprisonment of not less than
54 10 years nor more than 30 years, 10 years of which shall be a mandatory minimum term of imprisonment.

55 C3. The mandatory minimum terms of imprisonment prescribed for violations of this section shall
56 be served consecutively with any other sentence.

57 D. For the purposes of this section it may be inferred by text, title or appearance that a person who
58 is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual
59 material is less than 18 years of age.

60 E. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act
61 occurs, where the alleged offender resides, or where any sexually explicit visual material associated with
62 a violation of this section is produced, reproduced, found, stored, or possessed.

63 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
64 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
65 **appropriation is _____ for periods of imprisonment in state adult correctional facilities;**
66 **therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia**
67 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-**
68 **19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for**
69 **periods of commitment to the custody of the Department of Juvenile Justice.**

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