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HOUSE BILL NO. 2457

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 18.2-374.1:1 and 18.2-374.3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-390.3, relating to Child Pornography Images Registry; child pornography; certain computer crimes involving children; penalties.

Patrons—McDougle, Albo, Athey, Bell, Bolvin, Bryant, Cline, Cosgrove, Hurt, Landes, Louderback, O'Bannon, Saxman, Suit and Welch

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-374.1:1 and 18.2-374.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-390.3 as follows:

§ 18.2-374.1:1. Possession of child pornography; penalty.

A. Any person who knowingly possesses any sexually explicit visual material utilizing or having as a subject a person less than eighteen years of age shall be guilty of a Class 4 ~~misdemeanor~~ ^{felony}. However, no prosecution for possession of material prohibited by this section shall lie where the prohibited material comes into the possession of the person charged from a law-enforcement officer or law-enforcement agency.

B. The provisions of this section shall not apply to any such material which is possessed for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial or other proper purpose by a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, attorney, judge, or other person having a proper interest in the material.

C. All sexually explicit visual material which utilizes or has as a subject a person less than eighteen years of age shall be subject to lawful seizure and forfeiture pursuant to § 18.2-374.2.

D. Any person convicted of a second or subsequent offense under this section shall be guilty of a Class 6 5 felony.

§ 18.2-374.3. Use of communications systems to facilitate certain offenses involving children.

A. It shall be unlawful for any person ~~to 21 years of age or older, with lascivious intent, to knowingly and intentionally~~ use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means ~~for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or § 18.2-374.1~~ to (i) expose his or her sexual or genital parts to any child who he knows or has reason to believe is less than 17 years of age, to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person, (ii) propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child, (iii) propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361, or (iv) entice, lure, persuade or invite any such child to enter any vehicle, room, house, or other place for any of the purposes set forth in this subsection. A violation of this ~~section~~ subsection shall be punishable as a Class 6 felony.

B. It shall be unlawful for any person over the age of ~~eighteen~~ 18 to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a ~~minor~~ child less than 18 years of age for (i) any activity in violation of §§ 18.2-355, 18.2-358, or § 18.2-361 ~~or § 18.2-370~~, (ii) any activity in violation of § 18.2-374.1, or (iii) a violation of § 18.2-374.1:1. A violation of this subsection shall be punishable as a Class 5 felony.

C. As used in this ~~subsection~~ section, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications system. ~~A violation of this section shall be punishable as a Class 5 felony.~~

§ 19.2-390.3. Child Pornography Images Registry; maintenance; access.

A. The Computer Crimes Unit of the Office of the Attorney General, in cooperation with the Department of State Police, shall keep and maintain a Child Pornography Registry, separate and apart from all other records maintained by either department. The purpose of the Registry shall be to assist the efforts of law-enforcement agencies statewide to protect their communities from repeat child pornographers or sex offenders and to protect children from becoming victims of criminal offenders by

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58 *aiding in identifying victims and perpetrators. Criminal justice agencies, including law-enforcement*
59 *agencies, may request of the State Police a search and comparison of child pornography images*
60 *contained within the Registry with those images obtained by criminal justice agencies during the course*
61 *of official investigations.*

62 *B. The Registry shall include images of sexually explicit visual material in any form including any*
63 *picture, photograph, drawing, sculpture, motion picture film, digital image or similar visual*
64 *representation, presented as evidence and used in any conviction for any offense enumerated in*
65 *§§ 18.2-374.1 and 18.2-374.1:1. The Computer Crimes Unit in cooperation with the State Police shall*
66 *promulgate regulations governing the operation and maintenance of the Registry.*

67 *C. Registry information provided under this section shall be used for the purposes of the*
68 *administration of criminal justice or for the protection of the public in general and children in*
69 *particular. Use of the information or the images contained therein for purposes not authorized by this*
70 *section is prohibited and a willful violation of this section with the intent to harass or intimidate*
71 *another shall be punished as a Class 6 felony.*

72 *D. The Virginia Criminal Information Network and any form or document used by the Department of*
73 *State Police to disseminate information from the Registry shall provide notice that any unauthorized*
74 *possession, use or dissemination of the information or images is a crime punishable as a Class 6 felony.*

75 *E. On or before January 1, 2004, the Computer Crimes Unit of the Office of the Attorney General*
76 *and the State Police shall develop and maintain a system for making certain a registry of information*
77 *and images of child pornography is established, protected, and, where applicable, encrypted. The system*
78 *shall be secure and not capable of being altered except by the State Police. The State Police shall*
79 *remove all information that it knows to be inaccurate from the Registry.*

80 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
81 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at**
82 **least \$150,228 for periods of imprisonment in state adult correctional facilities and is \$0 for**
83 **periods of commitment to the custody of the Department of Juvenile Justice.**