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HOUSE BILL NO. 2457

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations on January 27, 2003)

(Patrons Prior to Substitute—Delegates McDougle and Saxman [HB 2190])

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.

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~~ *18* years of age shall be guilty of a Class ~~1 misdemeanor~~*6 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~~ *18* 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 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. A violation of this section 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, 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. As used in this subsection, "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 Office of the Attorney General, in cooperation with the Department of State Police, shall keep and maintain a Child Pornography Registry to be located within the State Police, 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 and to protect children from becoming victims of criminal offenders by aiding in identifying victims and perpetrators. Criminal justice agencies, including law-enforcement agencies, may request of the State Police a search and comparison of child pornography images contained within the Registry with those images obtained by criminal justice agencies during the course of official investigations.

B. The Registry shall include images of sexually explicit visual material in any form including any picture, photograph, drawing, sculpture, motion picture film, digital image or similar visual representation, presented as evidence and used in any conviction for any offense enumerated in §§ 18.2-374.1 and 18.2-374.1:1.

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

D. The Virginia Criminal Information Network and any form or document used by the Department of

State Police to disseminate information from the Registry shall provide notice that any unauthorized possession, use or dissemination of the information or images is a crime punishable as a Class 6 felony.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is $0 for periods of commitment to the custody of the Department of Juvenile Justice.

3. The State Police, in consultation with the Office of the Attorney General, shall promulgate regulations governing the operation and maintenance of the Registry.

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