



## Impact Analysis on Proposed Legislation

*Virginia Criminal Sentencing Commission*

### House Bill No. 2457

*(Patron – McDougle)*

**Date Submitted:** 01/06/03

**LD #:** 03-0809253

**Topic:** Child pornography

#### **Proposed Change:**

This proposal adds § 19.2-390.3 creating a Child Pornography Images Registry. 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 aiding in identifying victims and perpetrators. The Computer Crimes Unit of the Office of the Attorney General, in cooperation with the Department of State Police, shall maintain the Registry and promulgate regulations governing its operation. 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.

The Registry shall include images of sexually explicit visual material in any form presented as evidence and used in any conviction for any offense enumerated in §§ 18.2-374.1 and 18.2-374.1:1. 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. The Virginia Criminal Information Network (VCIN) 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.

This proposal amends § 18.2-374.1:1 to increase the penalty possessing child pornography from a Class 1 misdemeanor to a Class 6 felony for the first offense and from a Class 6 to a Class 5 felony for a second or subsequent violation.

The proposal revises § 18.2-374.3(A) such that a person age 21 or older who uses a computer or other communication system to expose himself to a child under the age of 17, to propose fondling between himself and the child, to propose sexual intercourse or sodomy with such a child, or to lure such a child to another location for any of these purposes is guilty of a Class 6 felony. The proposed amendment limits prosecution under subsection A to cases in which offenders are age 21 or older, victims are less than 17 years of age, and the acts are limited to those described (i.e., subsection A is expanded to include exposure of genitals by electronic means to a person under age 17 but eliminates references to production

or performances in obscene material by minors as defined by § 18.2-374 and paragraph six of § 18.2-370).

The proposal revises § 18.2-374.3(B) to exclude soliciting by electronic means to take indecent liberties with a child as defined in § 18.2-370 from the crimes defined as a Class 5 felony.

**Current Practice:**

The Virginia State Police maintains the Sex Offender and Crimes Against Minors Registry, which contains information on sexually violent offenders. Persons convicted of violating subdivision B1 of § 18.2-374.1 must register with this Registry as provided for in § 19.2-298.1. Under § 19.2-390.1, the unauthorized use or dissemination of information from this Registry is a Class 1 misdemeanor. According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, two offenders held pre- or post-trial in jail were convicted of violations of § 19.2-390.1. These offenders received local-responsible (jail) terms of nine months and 30 days, respectively.

Based on FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, a total of four offenders were convicted of § 18.2-374.3 as the primary offense for use of communications systems to facilitate offenses involving minors. One offender, convicted of a Class 6 felony under subsection A, was sentenced to a local-responsible (jail) term of six months. The other three were convicted of a Class 5 felony under subsection B; two received a state-responsible (prison) term of one year and one was sentenced to six months in jail. Only one offender was under the age of 21, but he was convicted under subsection B.

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, a total of 17 offenders held pre- or post-trial in jail were convicted under § 18.2-374.1:1 for possessing child pornography. Of the total, 12 were convicted of the misdemeanor first offense of possessing of child pornography. Approximately 75% received a local-responsible (jail) term with a median sentence of 30 days (one offender received a prison sentence as the result of an accompanying felony conviction). Five offenders were convicted of the felony subsequent conviction of possessing child pornography; all of these offenders were sentenced to incarceration (40% were sentenced to prison, with a median term of one year).

Currently, none of the offenses described in §§ 18.2-374.1:1, 18.2-374.3, or 19.2-390.3 are covered by the sentencing guidelines as the primary (most serious) offense, but convictions for these crimes may augment the sentence recommendation as additional offenses.

**Impact of Proposed Legislation:**

The proposed legislation establishes a Child Pornography Images Registry to facilitate the investigation of certain criminal offenders such as repeat child pornographers or sex offenders. The proposal also creates a new crime regarding unauthorized use of the Registry data, similar to that for unauthorized use of information from the Sex Offender and Crimes Against Minors Registry. Should individuals be prosecuted under the proposed statute, an increase in state-responsible (prison) bed space needs may result. However, the number of incidences that may be affected by the proposal cannot be determined; therefore, the impact of this portion of the proposal cannot be quantified.

While the proposed legislation retains existing penalties for violations § 18.2-374.3, the proposal amends the ages of offenders and victims and the types of behaviors covered under this statute. However, criminal justice databases available to the Commission do not contain information on the number of incidences that may be affected by the proposal. Although none of the offenders sentenced in FY2000 and FY2001 would have been impacted by limiting prosecution to offenders under the age of 21, it is unclear if any were involved in the production of explicit material or indecent liberties with children, as modified by the proposal. Furthermore, it is not possible to determine the number of cases that may be prosecuted as a result of the proposed changes. Although some changes in sentencing patterns would be expected due to the adjustments to ages and types of behaviors covered, it is not possible to estimate the impact on state-responsible (prison) beds for this element of the proposal.

The proposed legislation also raises the penalty structure for several existing crimes related to possession of child pornography. Application of sentences for similar crimes indicates that the proposal would increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, the net high state-responsible impact would be approximately seven beds. In addition, there will be an impact on local-responsible (jail) bed space; based on the methodology, there will be a need for one partial jail bed statewide, for a cost to the state of \$6,974 (using FY2001 jail inmate costs) for reimbursement to localities. There would be an additional statewide cost borne by the localities of \$5,043 for the same partial bed.

The anticipated impact on community corrections programs is unknown because sufficient data is not available to calculate the impact on such programs. However, it is expected to increase the need for probation services from both state and local programs.

No adjustment to the sentencing guidelines would be necessary under the proposal.

The Department of Juvenile Justice (DJJ) reports that, for FY2002, there were no juveniles committed to the Department for violation of § 18.2-374.1:1; however, there were four intakes at the Department's Court Services Units (CSUs) for the misdemeanor portion of § 18.2-374.1:1. DJJ also indicated that Class 5 and 6 felonies are placed on the same level under the Department's Length of Stay (LOS) guidelines; therefore, the proposed changes to the existing felony crimes will not affect the duration of commitment in the Department's Juvenile Correctional Centers (JCCs). The proposed legislation will affect the Department's LOS guidelines for the current misdemeanor portion of § 18.2-374.1:1. By elevating the crime to a Class 6 felony, the proposal may have an impact on the JCCs in two ways. First, as a felony, the proposed change would make a juvenile eligible for commitment, while under current law, at least four Class 1 misdemeanors would be necessary to commit a juvenile without an accompanying felony. Second, the minimum commitment assigned under the Department's LOS guidelines would be increased from the current 3-6 months to 6-12 months.

**Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY04	FY05	FY06	FY07	FY08	FY09
0	1	4	5	6	7

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$150,228 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.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2002.
2. New cases representing misdemeanor and local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the LIDS database.
3. The estimated number of offenders that would be sentenced under the proposal was adjusted to reflect that the impact of existing law (the misdemeanor portion of § 18.2-374.1:1 which was adopted in 1999) has not been fully felt yet. The Commission adjusted the number of affected offenders based on Commission analyses of case processing time for non-violent felons sentenced to jail during the most recent two years. To adjust for the incomplete data, it was assumed that every misdemeanant observed during the first year of implementation, would represent 1.07 offenders once the existing law were fully implemented; this was based on 26,355 total admissions, of which 24,612 were estimated to have been for crimes committed on or after July 1, 1999.
4. Cost per prison bed was assumed to be \$22,286 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
5. Cost per jail bed was based on the Compensation Board's FY2001 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$31.86 per day or \$11,637 per year. The local cost was calculated by using the daily expenditure cost of \$57.45 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$23.04 per day or \$8,415 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2003, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates for felony convictions were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2001; for non-violent sex offenses, this rate was 9.4%. Release dates for misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants, sentenced in FY2000, with no accompanying felony conviction; this rate was 39.15%.
3. Sentences for persons convicted of misdemeanor portion of § 18.2-374.1:1 were randomly drawn from offenders convicted of the felony provision of the same statute (currently a Class 6 felony). Sentences for persons convicted of the felony portion of § 18.2-374.1:1 were randomly drawn from offenders convicted of § 18.2-374.1 (all crimes are currently Class 5 felonies).