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HOUSE BILL NO. 1741

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 3, 2005)

(Patrons Prior to Substitute—Delegates Cosgrove, Bell [HB 2262] and Sickles [HB2701])

A *BILL to amend and reenact § 18.2-386.1 of the Code of Virginia, relating to photographs of undergarments, etc., without consent; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-386.1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-386.1. Unlawful filming, videotaping or photographing of another; penalty.

A. It shall be unlawful for any person to videotape, photograph, or film any nonconsenting person or create any videographic or still image record by any means whatsoever of the nonconsenting person if (i) that person is totally nude, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks or female breast in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location; or (ii) the videotape, photograph, film or videographic or still image record is created by placing the lens or image-gathering component of the recording device in a position to capture an image of the person's intimate parts or undergarments covering those intimate parts when the intimate parts or undergarments would not otherwise be visible; and (iii) when the circumstances set forth in clause (i) or (ii) are otherwise such that the person being videotaped, photographed, or filmed or otherwise recorded would have a reasonable expectation of privacy.

B. The provisions of this section shall not apply to filming, videotaping or photographing or other still image or videographic recording by (i) law-enforcement officers pursuant to a criminal investigation which is otherwise lawful or (ii) correctional officials and local or regional jail officials for security purposes or for investigations of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail, or to any sound recording of an oral conversation made as a result of any videotaping or filming pursuant to Chapter 6 (§ 19.2-61 et seq.) of Title 19.2.

C. A violation of subsection A shall be punishable as a Class 1 misdemeanor.

D. A violation of subsection A involving a nonconsenting person under the age of 18 shall be 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.