

2006 SESSION

INTRODUCED

064386340

HOUSE BILL NO. 1031

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 18.2-374.1:1 of the Code of Virginia, relating to possession of child pornography; penalty.

Patrons—Hurt and Byron

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-374.1:1 of the Code of Virginia is amended and reenacted 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 18 years of age shall be guilty of a Class 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 18 years of age shall be subject to lawful seizure and forfeiture pursuant to § 19.2-386.31.

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

E. For the purposes of this section a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is prima facie presumed to be less than 18 years of age.

F. The provisions of this section shall be severable, and if any of its provisions shall be held unconstitutional by a court of competent jurisdiction, then the decision of such court shall not affect or impair any of the remaining provisions.

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.

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