

# 2006 SESSION

## HOUSE SUBSTITUTE

062472340

### HOUSE BILL NO. 1031

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 6, 2006)

(Patrons Prior to Substitute—Delegates Hurt and Gilbert [HB 1310])

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

**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. *In a prosecution under this section, the trier of fact may infer that a participant in sexually explicit visual material, whom the material through its title, text, visual representations, or otherwise, represents or depicts as being a person less than 18 years of age is under 18 years of age, provided the totality of the facts and circumstances warrants drawing such an inference.*

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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