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**HOUSE BILL NO. 1071**

Offered January 11, 2006

Prefiled January 11, 2006

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

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 Patron—Lohr
 

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 Referred to Committee for Courts of Justice
 

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**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-374.1 and 18.2-374.1:1 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-374.1. Production, publication, sale, possession with intent to distribute, financing, etc., of sexually explicit items involving children; presumption as to age; severability; penalty.

A. For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term "sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, digital image or similar visual representation which depicts sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent.

B. A person shall be guilty of a Class 5 felony who:

1. Accosts, entices or solicits a person less than eighteen years of age with intent to induce or force such person to perform in or be a subject of sexually explicit visual material; or

2. Produces or makes or attempts or prepares to produce or make sexually explicit visual material which utilizes or has as a subject a person less than eighteen years of age; or

3. Who knowingly takes part in or participates in the filming, photographing or other reproduction of sexually explicit visual material by any means, including but not limited to computer-generated reproduction, which utilizes or has as a subject a person less than eighteen years of age; or

4. Sells, gives away, distributes, electronically transmits, displays with lascivious intent, purchases, or possesses with intent to sell, give away, distribute, transmit or display with lascivious intent sexually explicit visual material which utilizes or has as a subject a person less than eighteen years of age.

5. [Repealed.]

B1. [Repealed.]

C. A person shall be guilty of a Class 4 felony who knowingly finances or attempts or prepares to finance sexually explicit visual material which utilizes or has as a subject a person less than eighteen years of age.

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

E. 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.

F. A sentence for a conviction under this section shall include a mandatory minimum term of imprisonment of one year for each sexually explicit visual material distributed, and if the child depicted in the sexually explicit visual material is 13 years of age or younger shall include a mandatory minimum term of imprisonment of two years for each sexually explicit visual material distributed. These mandatory minimum sentences shall run consecutively with any other sentence.

§ 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 for each sexually explicit visual material possessed by that person. The sentence for each conviction under this subsection shall include a mandatory minimum term of imprisonment of six months, and if the child depicted in the sexually explicit visual material is 13 years of age or younger the sentence shall include a mandatory minimum term of imprisonment of one year. 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

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59 fide artistic, medical, scientific, educational, religious, governmental, judicial or other proper purpose by  
60 a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research,  
61 librarian, clergyman, attorney, judge, or other person having a proper interest in the material.

62 C. All sexually explicit visual material which utilizes or has as a subject a person less than 18 years  
63 of age shall be subject to lawful seizure and forfeiture pursuant to § 19.2-386.31.

64 D. Any person convicted of a second or subsequent offense under this section shall be guilty of a  
65 Class 5 felony. *The sentence for each conviction under this subsection shall include a mandatory*  
66 *minimum term of imprisonment of one year.*

67 E. *Any mandatory minimum sentence under this section shall run consecutively with any other*  
68 *sentence.*

69 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
70 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at**  
71 **least \$120,389 for periods of imprisonment in state adult correctional facilities and is \$0 for**  
72 **periods of commitment to the custody of the Department of Juvenile Justice.**