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HOUSE BILL NO. 864

Offered January 11, 2006

Prefiled January 10, 2006

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

Patrons—Byron, Abbitt, Albo, Athey, Cosgrove, Crockett-Stark, Gear, Gilbert, Hugo, Jones, S.C., Kilgore, Landes, O'Bannon, Rust, Sherwood and Wright

Referred to Committee for Courts of Justice

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.

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; and

"Virtual child pornography" means any visual depiction, including any photograph, film, video, picture, computer image, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where such visual depiction is a digital image, computer image, or computer-generated image that is indistinguishable from an actual image of a minor engaging in 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.

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 virtual child pornography*; or

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

3. Who knowingly takes part in or participates in the filming, photographing or other reproduction of (a) 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 (b) virtual child pornography*; 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 (a) sexually explicit visual material which utilizes or has as a subject a person less than eighteen years of age *or (b) virtual child pornography*.

5. [Repealed.]

B1. [Repealed.]

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

D. For the purposes of this section *an image* or a person who is depicted as or presents the appearance of being less than eighteen years of age in *virtual child pornography* or sexually explicit visual material is prima facie presumed to be less than eighteen years of age. *Proof that actual persons eighteen years of age or older were used to create the virtual child pornography or sexually explicit visual material shall rebut the presumption.*

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.

INTRODUCED

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58 § 18.2-374.1:1. Possession of child pornography; penalty.

59 A. Any person who knowingly possesses (a) any sexually explicit visual material utilizing or having
60 as a subject a person less than 18 years of age or (b) *virtual child pornography* shall be guilty of a
61 Class 6 felony. However, no prosecution for possession of material prohibited by this section shall lie
62 where the prohibited material comes into the possession of the person charged from a law-enforcement
63 officer or law-enforcement agency.

64 B. The provisions of this section shall not apply to any such material which is possessed for a bona
65 fide artistic, medical, scientific, educational, religious, governmental, judicial or other proper purpose by
66 a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research,
67 librarian, clergyman, attorney, judge, or other person having a proper interest in the material.

68 C. All (a) sexually explicit visual material which utilizes or has as a subject a person less than 18
69 years of age and (b) *virtual child pornography* shall be subject to lawful seizure and forfeiture pursuant
70 to § 19.2-386.31.

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

73 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
74 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
75 **be determined for periods of imprisonment in state adult correctional facilities and cannot be**
76 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**