



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1031

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Hurt)

LD #: 06-2472340

Date: 2/2/2006

Topic: Possession of child pornography

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposed legislation adds subsections (E) and (F) to § 18.2-374.1:1 relating to possession of child pornography. Subsection (E) stipulates that, in a prosecution under this section, the trier of fact may infer that a participant in sexually explicit visual material whom the material represents or depicts as being 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. Subsection (F) provides that if any provision in § 18.2-374.1:1 is held to be unconstitutional by a court, then the decision of the court shall not affect or impair any of the remaining provisions.

Currently, § 18.2-374.1:1 is punishable as a Class 6 felony for a first offense possession of child pornography when the subject is “a person less than 18 years of age”. A second or subsequent conviction under § 18.2-374.1:1 is a Class 5 felony.

Analysis:

According to the FY2002 and FY2003 Pre-Sentence Investigation (PSI) database, three offenders were convicted under § 18.2-374.1:1. One was convicted of a first-time possession of obscene materials and was sentenced to no new term of incarceration. The other two were convicted of a subsequent possession of obscene materials; both were sentenced to prison terms (1.5 and 3 years).

Impact of Proposed Legislation:

State adult correctional facilities. Adding criteria to § 18.2-374.1:1 regarding the depicted or presumptive age of the victim may broaden the applicability of the crime. In this sense, the proposal may have an impact on state-responsible (prison) bed space. However, existing databases do not provide sufficient information to estimate the number of convictions that would be likely to occur under the proposal. Therefore, the magnitude of the increase cannot be quantified.

Local adult correctional facilities. The proposal may have an impact on local-responsible (jail) bed space; however, the impact of the proposal cannot be determined.

Adult community corrections programs. The proposal may have an impact on community corrections resources; however, this impact cannot be determined.

Virginia's sentencing guidelines. Felony convictions under § 18.2-374.1:1 are not covered by the sentencing guidelines, but may appear as additional offenses that augment the guidelines recommendation. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation for periods of imprisonment in state adult correctional facilities cannot be determined and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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