



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 348

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

LD #: 06-4897744

Date: 3/10/2006

Topic: Aiding in payment for child pornography

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **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 § 18.2-374.1:2 relating facilitating payment for sexually explicit visual materials. The proposal states that a person shall be guilty of a Class 4 felony for intentionally operating an Internet website for the purpose of facilitating the payment for access to sexually explicit visual material which utilizes or has as a subject a person under the age of 18 years.

Currently, § 18.2-374.3(A) states that it is a Class 6 felony for any person to use a communications system, including computers, to procure or promote the use of a minor for indecent liberties (§ 18.2-370) or the production, sale, etc., of sexually explicit items involving children (§ 18.2-374.1). In addition, under § 18.2-376.1 it is a Class 1 misdemeanor for a first offense, and a Class 6 felony for a second or subsequent, sale of obscene pictures or performances by computer.

Analysis:

According to the FY2002 and FY2003 Pre-Sentence Investigation (PSI) database, there was one offender who was convicted under § 18.2-374.3(A) and sentenced to no active incarceration time for using a communications system to procure or promote minors for indecent liberties or production of sexually explicit material.

Based on FY2003 and FY2004 Local Inmate Data System (LIDS) data, there were no convictions during the time period for violations of § 18.2-376.1, sale of obscene pictures, etc., by computer. Similarly, PSI data between FY2002 and FY2003 also reveal that there were no convictions for a second or subsequent sale of obscene pictures, etc., by computer under § 18.2-376.1.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation would create a new Class 4 felony crime. In this sense, the proposal may have an impact on state-responsible (prison) bed space. However, existing databases are insufficient to determine the exact impact. Based on the low number of

convictions for similar crimes involving computer use and sexually explicit material, any impact is likely to be small.

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 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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