



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2749 Amendment in the Nature of a Substitute (Patron Prior to Substitute –Hurt)

LD#: 07-2019820

Date: 2/12/2007

Topic: Sex offender registration requirements and 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 proposal amends several statutes to increase the penalty for certain offenses related to the production of child pornography, to create a new felony related to internet solicitation, and to expand the requirements for offenders who must register or re-register with the Sex Offender and Crimes against Minors Registry (SOR). The proposed changes involving criminal penalties are summarized in the table below.

Offense(s)	Victim's Age	Current Penalty	Proposed Penalty
Accosting or enticing a minor to be the subject of child pornography – § 18.2-374.1(B1) Producing or attempting to produce child pornography – § 18.2-374.1(B2) Participating in the filming or production of child pornography - § 18.2-374.1 (B3)	Less than 15 years old	Class 5 felony (1 to 10 years)	Class 4 felony (2 to 10 years)
Use of a communication system to solicit minors with the intent to commit an act of indecent liberties (Proposed § 18.2-374.3C)	15 to 17 years old	None	<u>Offender is less than 5 years older than victim:</u> None <u>Offender is at least 5 years older than victim:</u> Class 6 felony

The proposal moves the offense defined in § 18.2-374.1:2 (operating an Internet website to facilitate the payment for access to child pornography) to § 18.2-374.1:1C, but does not change the penalty for this offense. The proposal also clarifies the definition of “sexually explicit visual material” by specifically including material stored in a computer’s temporary Internet cache or other temporary memory.

The proposal amends §§ 9.1-903, 9.1-904 and 9.1-912 to expand the requirements for offenders who must register or re-register with the Sex Offender and Crimes against Minors Registry (SOR). Under the proposal, an offender would have to report, in addition to other information already required, any e-mail address, instant messaging, chat or other Internet communication name the offender uses or intends to use. The proposal also provides for the exchange of certain information between Virginia State Police and various Internet services to assist in determining if and when a SOR registrant may have failed to provide required information. Several other amendments are technical in nature.

The 2006 General Assembly revised the penalties for failing to register or re-register as required. For offenders who have not been convicted of a sexually violent offense or murder as defined in § 9.1-902, failure to fully comply with registration requirements is a Class 1 misdemeanor for the first offense and a Class 6 felony for any subsequent violation. Penalties are higher for offenders who have been convicted of a sexually violent offense or murder. For these offenders, failing to register or re-register in the prescribed manner is a Class 6 felony for the first offense and a Class 5 felony for a subsequent violation.

Prior to July 1, 2006, failing to register as required was a Class 1 misdemeanor or, in cases involving sexually violent offenders, a Class 6 felony. There were no penalty enhancements for subsequent violations.

Analysis:

In 2006, the Virginia Criminal Sentencing Commission conducted a special study of offenses involving child pornography and online/electronic solicitation of minors.

According to the Commission’s data, from July 2002 through April 2006, there were 47 cases in which conviction for a crime associated with the production of child pornography (§ 18.2-374.1) was the primary (or most serious) offense in the case. Just over half (55%) of these offenders were sentenced to a state-responsible (prison) term of one year or more; for the prison cases, the median sentence was 3½ years. Approximately one in four offenders (26%) were given a local-responsible (jail) term. The remaining offenders (19%) were given probation without an active term of incarceration. None of the offenders were sentenced to the maximum term available under current law.

According to the same data, there were a total of 67 cases in which conviction for a crime currently defined in § 18.2-374.3 was the primary (or most serious) offense in the case. Of the total, 38 offenders were convicted of a Class 5 felony for using a communication system to solicit minors for prostitution, sodomy or pornography. In these cases, 39% of offenders were sentenced to a state-responsible (prison) term of one year or more; the median sentence for prison cases was two years. More than one in three offenders (37%) were given a local-responsible (jail) term. The remaining offenders (24%) were given probation without an active term of incarceration. None of the offenders were sentenced to the maximum term available under current law.

The other 29 offenders convicted under § 18.2-374.3 were sentenced for a Class 6 felony for using a communication system to promote or procure the use of minors in obscene material or for any activity in violation of § 18.2-370 (indecent liberties). For this crime, 31% of offenders received a prison term with a median prison sentence of 1.7 years. Nearly one in four offenders (24%) were ordered to serve a jail term. Almost half of offenders convicted of this crime (45%) were given probation without an

active term of incarceration. None of the offenders were sentenced to the maximum term available under current law.

Impact of Proposed Legislation:

State adult correctional facilities. Increasing the penalty for certain offenses related to the production of child pornography from a Class 5 to a Class 4 felony is likely to increase state-responsible (prison) bed space needs of the Commonwealth; however, the impact of this aspect of the proposal is expected to be small. Creating a new Class 6 felony for certain acts of online solicitation of minors who are 15 to 17 years of age may also increase the need for prison beds, but the number of additional felony convictions that may result from this aspect of the proposal cannot be estimated. Finally, proposed changes to Sex Offender Registry requirements could result in more Registry violations and additional felony convictions; however, the impact of this element of the proposal cannot be determined.

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. Currently, offenses affected by the proposal are not covered by the sentencing guidelines as the primary (or most serious) offense in a case; however, convictions under this statute may augment the guidelines recommendation if a covered offense is the most serious at sentencing. The Virginia Criminal Sentencing Commission has recommended to the 2007 General Assembly that offenses defined in §§ 18.2-374.1, § 18.2-374.1:1 and 18.2-374.3 be added to the sentencing guidelines beginning July 1, 2007.

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 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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