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**HOUSE BILL NO. 938**

Offered January 13, 2010

Prefiled January 13, 2010

*A BILL to amend and reenact § 18.2-374.1:1 of the Code of Virginia, relating to penalty for possession or reproduction of child pornography by a minor.*

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Patron—Janis

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 18.2-374.1:1 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-374.1:1. Possession, reproduction, distribution, and facilitation of child pornography; penalty.

A. Any person who knowingly possesses child pornography is guilty of a Class 6 felony.

B. Any person who commits a second or subsequent violation of subsection A is guilty of a Class 5 felony.

C. Any person who reproduces by any means, including by computer, sells, gives away, distributes, electronically transmits, displays with lascivious intent, purchases, or possesses with intent to sell, give away, distribute, transmit, or display child pornography with lascivious intent shall be punished by not less than five years nor more than 20 years in a state correctional facility. Any person who commits a second or subsequent violation under this subsection shall be punished by a term of imprisonment of not less than five years nor more than 20 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment.

D. Any person who intentionally operates an Internet website for the purpose of facilitating the payment for access to child pornography is guilty of a Class 4 felony.

E. All child pornography shall be subject to lawful seizure and forfeiture pursuant to § 19.2-386.31.

F. For purposes of this section it may be inferred by text, title or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

G. *Whenever any person under the age of 18 who has not previously been convicted of an offense under subsection A or C of this section pleads guilty to or enters a plea of not guilty to a violation of subsection A or C of this section, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused and the attorney for the Commonwealth, may defer further proceedings and place him on probation upon terms and conditions for a period not exceeding one year. Such conditions may include restricted use of the Internet or computer, including an electronic communication device as defined in § 18.2-190.1.*

*Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.*

H. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any child pornography is produced, reproduced, found, stored, received, or possessed in violation of this section.

HI. The provisions of this section shall not apply to any such material that is possessed for a bona fide medical, scientific, governmental, or judicial purpose by a physician, psychologist, scientist, attorney, or judge who possesses such material in the course of conducting his professional duties as such.

INTRODUCED

HB938