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SENATE BILL NO. 1260

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact § 18.2-374.1:1 of the Code of Virginia, relating to possession of child pornography by law-enforcement agencies.

Patron—Vogel

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. 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.

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

2. That the provisions of this act are declarative of existing law.