



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 963

(Patron – Bell)

LD #: 12103466

Date: 1/6/2012

Topic: Child pornography

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000*
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined, likely to be small
- **Juvenile Detention Facilities:**
Cannot be determined, likely to be small

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-374.1:1(C) of the *Code of Virginia* to expand the crime of reproducing, transmitting, etc., child pornography, to include soliciting another (a) to send or submit child pornography to himself or another in order to gain entry into a group, association, or assembly of persons engaged in trading or sharing child pornography, or (b) to send or provide to him any child pornography in exchange for money or anything of value. This offense would be punishable by not less than five nor more than 20 years imprisonment. A second or subsequent conviction under this subsection carries a mandatory minimum term of incarceration of five years. The behavior of soliciting another to send or submit child pornography may currently be covered under § 18.2-29, which makes it a Class 6 felony to command, entreat, or otherwise attempt to persuade another person to commit a felony other than murder. If an adult solicits a minor to commit a felony (other than murder), the offense is increased to a Class 5 felony.

Currently, § 18.2-374.1:1(C) specifies the penalty for reproducing, selling, giving, distributing, electronically transmitting, displaying with lascivious intent, purchasing or possessing with intent to sell, etc., child pornography. Under § 18.2-374.1:1(A), knowingly possessing child pornography is a Class 6 felony. A second or subsequent conviction for possession of child pornography is increased to a Class 5 felony. Pursuant to § 9.1-902, offenders convicted under § 18.2-374.1:1(B) or (C) must register with the state's Sex Offender and Crimes against Minors Registry.

Analysis:

According to the Sentencing Guidelines Database (SG) for fiscal year (FY) 2010 and FY2011, 169 offenders were convicted of producing, reproducing, or distributing child pornography (in violation of §§ 18.2-374.1 or 18.2-374.1:1) or soliciting a minor via the internet (in violation of § 18.2-374.3). In

these cases, one of these crimes was the primary (or most serious) offense at sentencing. Overall, 18% of these offenders received probation without an active term of incarceration, 22% received a local-responsible (jail) term with a median sentence of 6.0 months, and 60% received a state-responsible (prison) term with a median sentence of 5.0 years.

During the same two-year period, 113 offenders were convicted of a Class 5 or 6 felony under § 18.2-374.1:1 for possessing child pornography (as the primary offense). Of these, 27% received probation without an active incarceration term to serve, 28% received a local-responsible (jail) term with a median sentence of 3.0 months, and 45% received a state-responsible (prison) term with a median sentence of 3.0 years.

Regarding the Department of Juvenile Justice (DJJ), Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The DJJ reports an average of seven intake petitions per year for the three most recent fiscal years (FY2009 to FY2011) for a violation of subsection C of § 18.2-374.1:1 of the *Code* by a person under the age of 18. From FY2009 to FY2011, one juvenile was committed to the Department for a violation of subsection C of § 18.2-374.1:1.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding an existing felony offense, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of additional felony convictions likely to result from enactment of the proposal. Therefore, the impact of the proposal cannot be determined.

Local adult correctional facilities. Similarly, the proposal may 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 cannot be determined, the potential impact on community corrections programs cannot be quantified.

Virginia’s sentencing guidelines. Convictions under § 18.2-374.1:1 are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. It is possible that a person under the age of 18 could be adjudicated delinquent for an offense involving the solicitation for child pornography for the purpose of gaining entry into a group or association, as proposed. In such an event, an adjudication for a felony in juvenile and domestic relations district court would make that person eligible for commitment to a juvenile correctional center pursuant to subsection (A)(14) of § 16.1-278.8 of the *Code*. Therefore, proposal may have an impact on juvenile correctional center bed space needs. Although likely to be small, if any, the actual impact on juvenile correction center beds cannot be determined.

Juvenile detention facilities. Similarly, it is possible that a person under the age of 18 could be adjudicated delinquent for an offense involving the solicitation for child pornography to gain entry into a group or association. In such an event, an alleged felony offense could subject that person to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1 of the *Code*. If the person is

adjudicated delinquent for a felony offense in juvenile and domestic relations district court, then he or she would be eligible for placement in a post-dispositional detention program pursuant to § 16.1-284.1. Therefore, the legislative proposal may have an impact on juvenile detention bed space needs. Although likely to be small, if any, the actual impact on juvenile detention beds cannot be determined.

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; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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