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HOUSE BILL NO. 1745

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 25, 2013)

(Patron Prior to Substitute—Delegate Gilbert)

A *BILL to amend and reenact §§ 18.2-370 and 18.2-374.3 of the Code of Virginia, relating to certain sexual offenses involving children.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-370 and 18.2-374.3 of the Code of Virginia are amended and reenacted as follows:
§ 18.2-370. Taking indecent liberties with children; penalties.

A. Any person 18 years of age or over, who, with lascivious intent, knowingly and intentionally commits any of the following acts with any child under the age of 15 years is guilty of a Class 5 felony:

(1) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or

(2) [Repealed.]

(3) Propose that any such child feel or fondle *his own sexual or genital parts or* the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or

(4) Propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or

(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this section.

B. Any person 18 years of age or over who, with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of 18 years to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of sexually explicit material; shall be guilty of a Class 5 felony.

C. Any person who is convicted of a second or subsequent violation of this section shall be guilty of a Class 4 felony; provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

D. Any parent, step-parent, grandparent or step-grandparent who commits a violation of either this section or clause (v) or (vi) of subsection A of § 18.2-370.1 (i) upon his child, step-child, grandchild or step-grandchild who is at least 15 but less than 18 years of age is guilty of a Class 5 felony or (ii) upon his child, step-child, grandchild or step-grandchild less than 15 years of age is guilty of a Class 4 felony.

§ 18.2-374.3. Use of communications systems to facilitate certain offenses involving children.

A. As used in subsections C, D, and E "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, the Internet, or any telecommunications, wire, computer network, or radio communications system.

B. It shall be unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § 18.2-370 or § 18.2-374.1. A violation of this subsection is a Class 6 felony.

C. It shall be unlawful for any person 18 years of age or older to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any person he knows or has reason to believe is a child less *younger* than 15 years of age to knowingly and intentionally:

1. Expose his sexual or genital parts to any child to whom he is not legally married or propose that any such child expose his sexual or genital parts to such person;

2. Propose that any such child feel or fondle *his own sexual or genital parts or* the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child;

3. Propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or

4. Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place,

60 for any purposes set forth in the preceding subdivisions.

61 Any person who violates this subsection is guilty of a Class 5 felony. However, if the person is at
62 least seven years older than the child he knows or has reason to believe is less than 15 years of age, the
63 person shall be punished by a term of imprisonment of not less than five years nor more than 30 years
64 in a state correctional facility, five years of which shall be mandatory minimum term of imprisonment.
65 Any person who commits a second or subsequent violation of this subsection when the person is at least
66 seven years older than the child he knows or has reason to believe is less than 15 years of age shall be
67 punished by a term of imprisonment of not less than 10 years nor more than 40 years, 10 years of
68 which shall be a mandatory minimum term of imprisonment.

69 D. Any person who uses a communications system, including but not limited to computers or
70 computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with
71 lascivious intent, any child he knows or has reason to believe is at least 15 years of age but less
72 *younger* than 18 years of age to knowingly and intentionally commit any of the activities listed in
73 subsection C if the person is at least seven years older than the child is guilty of a Class 5 felony. Any
74 person who commits a second or subsequent violation of this subsection shall be punished by a term of
75 imprisonment of not less than one nor more than 20 years, one year of which shall be a mandatory
76 minimum term of imprisonment.

77 E. Any person 18 years of age or older who uses a communications system, including but not limited
78 to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of
79 soliciting any person he knows or has reason to believe is a child less *younger* than 18 years of age for
80 (i) any activity in violation of § 18.2-355 or 18.2-361, (ii) any activity in violation of § 18.2-374.1, or
81 (iii) a violation of § 18.2-374.1:1 is guilty of a Class 5 felony.

82 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
83 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
84 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
85 **3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing**
86 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated**
87 **amount of the necessary appropriation cannot be determined for periods of commitment to the**
88 **custody of the Department of Juvenile Justice.**