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SENATE BILL NO. 709

Offered January 14, 2015

Prefiled December 2, 2014

A *BILL to amend and reenact §§ 18.2-386.1 and 19.2-249.2 of the Code of Virginia, relating to publication of images resulting from unlawful videographic or still images of another; venue; penalty.*

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-386.1 and 19.2-249.2 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-386.1. Unlawful creation of image of another; penalty.

A. It shall be unlawful for any person to knowingly and intentionally create any videographic or still image by any means whatsoever of any nonconsenting person if (i) that person is totally nude, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks or female breast in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location; or (ii) the videographic or still image is created by placing the lens or image-gathering component of the recording device in a position directly beneath or between a person's legs for the purpose of capturing an image of the person's intimate parts or undergarments covering those intimate parts when the intimate parts or undergarments would not otherwise be visible to the general public; and when the circumstances set forth in clause (i) or (ii) are otherwise such that the person being recorded would have a reasonable expectation of privacy.

B. The provisions of this section shall not apply to any videographic or still image created by any means whatsoever by (i) law-enforcement officers pursuant to a criminal investigation which is otherwise lawful or (ii) correctional officials and local or regional jail officials for security purposes or for investigations of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail, or to any sound recording of an oral conversation made as a result of any videotaping or filming pursuant to Chapter 6 (§ 19.2-61 et seq.) of Title 19.2.

C. A violation of subsection A shall be punishable as a Class 1 misdemeanor.

D. A violation of subsection A involving a nonconsenting person under the age of 18 shall be punishable as a Class 6 felony.

E. *Any person who violates subsection A and also publishes the videographic or still image on the Internet is guilty of a Class 6 felony.*

F. Where it is alleged in the warrant, information, or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the 10-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, and when such offenses were not part of a common act, transaction, or scheme, and such person has been at liberty as defined in § 53.1-151 between each conviction, he shall be guilty of a Class 6 felony.

§ 19.2-249.2. Venue for prosecution of computer and other crimes.

For the purpose of venue under (i) the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), any violation of the article or (ii) § 18.2-386.1, any violation of the section shall be considered to have been committed in any county or city:

1. In which any act was performed in furtherance of any course of conduct that violated ~~this article~~ any provision listed above;

2. In which the owner has his principal place of business in the Commonwealth;

3. In which any offender had control or possession of any proceeds of the violation or of any books, records, documents, property, financial instrument, computer software, computer program, computer data, or other material or objects that were used in furtherance of the violation;

4. From which, to which, or through which any access to a computer or computer network was made whether by wires, electromagnetic waves, microwaves, optics or any other means of communication;

5. In which the offender resides; or

6. In which any computer that is an object or an instrument of the violation is located at the time of the alleged offense.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot

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SB709

59 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter
60 2 of the Acts of Assembly of 2014, Special Session I, requires the Virginia Criminal Sentencing
61 Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated
62 amount of the necessary appropriation cannot be determined for periods of commitment to the
63 custody of the Department of Juvenile Justice.