



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1560

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Norment)

LD#: 17105055

Date: 2/1/2017

Topic: Child pornography

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Direct Care:**
Cannot be determined **
- **Juvenile Detention Facilities:**
Cannot be determined **

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 780 of the 2016 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 of the *Code of Virginia* relating to certain child pornography offenses. Currently, under § 18.2-374.1:1(A), any person who possesses child pornography is guilty of a Class 6 felony. A second or subsequent violation is punishable as a Class 5 felony. Pursuant to § 18.2-374.1:1(C), it is unlawful to (i) reproduce, sell, give, distribute, electronically transmit, display, purchase, or possess with intent to distribute, etc., child pornography, or to (ii) solicit child pornography in order to gain entry into a group of people engaged in trading or sharing child pornography. These offenses are 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 five years.

Under the proposal, the statutory maximum penalty for possession or reproduction, etc., of child pornography would be increased to 30 years imprisonment if the offender appears in the pornography in his possession and the child is less than 15 years of age. The enhanced penalty, as well as a five-year mandatory minimum term of imprisonment, would apply in instances where the offender appears in the child pornography and is at least seven years older than the child. The maximum penalty for a second or subsequent conviction for reproduction, etc., of child pornography in which the offender appears where the subject is younger than 15 years of age would be increased to 40 years imprisonment. If the offender is at least seven years older than the subject of the child pornography, a fifteen-year mandatory minimum term of confinement would apply.

Analysis:

According to fiscal year (FY) 2011 through FY2016 Sentencing Guidelines data, 596 offenders were convicted under § 18.2-374.1:1(A) for a first-offense for possessing child pornography. This offense was the primary, or most serious, offense in 349 cases. Of these, approximately half (51%) received a state-responsible (prison) term; the median prison sentence during this time period was 2.8 years. Another 28.9% received a local-responsible (jail) term with a median sentence of six months. The remaining 20.1% did not receive an active term of incarceration to serve after sentencing. Data for this six-year period also indicate that 169 offenders were convicted under § 18.2-374.1:1(B) for a second or subsequent offense of possessing child pornography. For 129 of these individuals, this was the primary offense at sentencing. Nearly all (88.4%) of these offenders were given a prison term, for which the median sentence was 3.4 years.

Sentencing Guidelines data for FY2011 to FY2016 indicate that 134 individuals were convicted of a felony under § 18.2-374.1:1(C) for reproduction, etc., of child pornography. This offense was the primary offense in 116 of the cases. More than three-quarters (78.4%) were sentenced to a prison term, with a median sentence length of 6.5 years. While 13.8% received a jail term, with a median sentence of four months, the remaining 7.8% did not receive an active term of incarceration to serve after sentencing.

The Sentencing Guidelines database for this six-year period indicates that, of the 121 offenders convicted of production of child pornography under § 18.2-374.1 during this time period, 39 (32.2%) were sentenced alongside a conviction under § 18.2-374.1:1 for possession, reproduction, etc., of child pornography.

Existing databases do not contain sufficient detail to identify the age of the subject of the child pornography or whether the offender appears in the pornography.

Impact of Proposed Legislation:

State adult correctional facilities. Because it increases the penalty for existing felony offenses and establishes or lengthens mandatory minimum terms of confinement under certain circumstances, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, likely to result from enactment of the proposal. As a result, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. The proposal is not expected to impact the need for local-responsible (jail) beds, since some of the affected offenders would be required to serve a state-responsible (prison) term.

Adult community corrections resources. The proposal is not expected to increase the need for community corrections resources and will likely delay the need for services for some offenders affected by the proposal, as some will stay in prison longer prior to being released to the community.

Virginia's sentencing guidelines. Violations involving the possession, reproduction, transmission, sale, or distribution of child pornography under § 18.2-374.1:1 are covered by the sentencing guidelines as the primary, or most serious, offense. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the impact of the proposal on the bed space needs of juvenile detention facilities 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 780 of the 2016 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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