

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 839

An Act to amend and reenact §§ 2.1-124 and 18.2-374.1 of the Code of Virginia, relating to child pornography; penalty.

[S 1067]

Approved May 5, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-124 and 18.2-374.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-124. Criminal cases.

Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.1-21, (iii) *violation of laws relating to motor vehicles and their operation*, (iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) *violation of the criminal laws involving child pornography and sexually explicit visual material involving children* and (vii) cases involving the practice of law without being duly authorized or licensed or the illegal practice of law, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may, in his discretion, institute proceedings by information, presentment or indictment, as the one or the other may be appropriate, and conduct the same.

In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a petition for appeal has been granted by the Court of Appeals or a writ of error has been granted by the Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth. In any criminal case in which a petition for appeal has been granted by the Court of Appeals, the Attorney General shall continue to represent the Commonwealth in any further appeal of a case from the Court of Appeals to the Supreme Court.

§ 18.2-374.1. Production, publication, sale, possession with intent to distribute, financing, etc., of sexually explicit items involving children; presumption as to age; severability.

A. For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term "sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, *digital image* or similar visual representation which depicts sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent.

B. A person shall be guilty of a Class 5 felony who:

1. Accosts, entices or solicits a person less than eighteen years of age with intent to induce or force such person to perform in or be a subject of sexually explicit visual material; or

2. Produces or makes or attempts or prepares to produce or make sexually explicit visual material which utilizes or has as a subject a person less than eighteen years of age; or

3. Who knowingly takes part in or participates in the filming, photographing or other reproduction of sexually explicit visual material *by any means, including but not limited to computer-generated reproduction*, which utilizes or has as a subject a person less than eighteen years of age; or

4. Sells, gives away, distributes, *electronically transmits*, displays with lascivious intent, purchases, or possesses with intent to sell, give away, distribute, *transmit* or display with lascivious intent sexually explicit visual material which utilizes or has as a subject a person less than eighteen years of age.

5. [Repealed.]

B1. [Repealed.]

C. A person shall be guilty of a Class 4 felony who knowingly finances or attempts or prepares to finance sexually explicit visual material which utilizes or has as a subject a person less than eighteen years of age.

D. For the purposes of this section a person who is depicted as or presents the appearance of being less than eighteen years of age in sexually explicit visual material is prima facie presumed to be less than eighteen years of age.

E. The provisions of this section shall be severable and, if any of its provisions shall be held unconstitutional by a court of competent jurisdiction, then the decision of such court shall not affect or impair any of the remaining provisions.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0.