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**HOUSE BILL NO. 1014**

Offered January 11, 2006

Prefiled January 11, 2006

*A BILL to amend and reenact § 18.2-374.1 of the Code of Virginia, relating to sexually explicit items involving children; penalty.*

Patrons—Hurt, Albo, Athey, Byron, Callahan, Cosgrove, Crockett-Stark, Fralin, Iaquinto, Lingamfelter, Marshall, D.W., O'Bannon, Rapp, Sherwood, Suit, Tata, Wardrup, Welch and Wright

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 18.2-374.1 of the Code of Virginia is amended and reenacted as follows:**

§ 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; penalty.

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. A person shall be guilty of a Class 4 felony for knowingly facilitating the payment, in any manner, for access to sexually explicit material over the Internet involving persons under the age of 18. For purposes of this subsection the term "person" shall include any individual, partnership, association, corporation, or joint venture.

E.F. 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 or commitment. 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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

INTRODUCED

HB1014