



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1260 (Patron – Surovell)

LD#: 14104173

Date: 1/20/2014

Topic: Transmission of sexually explicit images by a minor

Fiscal Impact Summary:

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

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposed legislation adds § 18.2-374.2:1 to the *Code of Virginia*, relating to the electronic transmission of sexually explicit images by a minor. Under the proposed § 18.2-374.2:1, it would be a Class 2 misdemeanor for a minor to transmit, distribute, publish, or disseminate an electronically transmitted communication containing a sexually explicit image of himself or herself. In addition, any minor who knowingly possesses between one and ten electronically transmitted communications containing a sexually explicit image of another minor would be guilty of a Class 2 misdemeanor.

The proposed § 18.2-374.2:1 would allow a judge to take a finding of guilt under advisement and place the offender on probation for up to one year if the minor has not previously been convicted a misdemeanor under the statute. Following successful fulfillment of the terms and conditions, the charge may be dismissed without an adjudication of guilt.

Currently, under § 18.2-374.1:1(A), knowingly possessing any sexually explicit visual material that utilizes or has as a subject an identifiable minor is a Class 6 felony. A second or subsequent conviction for possession of child pornography is increased to a Class 5 felony. Under § 18.2-374.1:1(C), the reproduction, transmission, etc., of child pornography is a felony punishable by up to 20 years imprisonment. An individual who is convicted of a second or subsequent violation of § 18.2-374.1:1(C) is subject to a five-year mandatory minimum term of incarceration. Producing or taking part in child porn, as defined by § 18.2-374.1, are felonies with statutory maximum penalties ranging from 20 to 40 years.

Analysis:

According to fiscal year (FY) 2012 and FY2013 Sentencing Guidelines data, no offenders under the age of 18 were sentenced in circuit court for a violation of §§ 18.2-374.1 or 18.2-374.1:1 during this time period.

Impact of Proposed Legislation:

State adult correctional facilities. Because the possession, reproduction, etc., of child porn is currently punishable as a Class 6 felony or higher, adding § 18.2-374.2:1 to reduce the penalty for minors in select cases is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, the proposal is not expected to increase local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal is not expected to increase the need for adult community corrections resources.

Virginia's sentencing guidelines. The sentencing guidelines would not cover convictions under the proposed § 18.2-374.2:1 if a violation of this section is the primary (most serious) offense in a case; however, convictions for this crime may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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