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SENATE BILL NO. 1560

Offered January 20, 2017

A BILL to amend and reenact § 18.2-374.1:1 of the Code of Virginia, relating to possession of child pornography where accused has produced the child pornography; penalties.

Patron—Norment

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

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

§ 18.2-374.1:1. Possession, reproduction, distribution, solicitation, and facilitation of child pornography; penalty.

A. Any person who knowingly possesses child pornography is guilty of a Class 6 felony.

B. Any person who commits a second or subsequent violation of subsection A is guilty of a Class 5 felony.

C. Any person who knowingly possesses child pornography that he has produced as described in subsection B of § 18.2-374.1 shall be punished by not less than five years nor more than 20 years in a state correctional facility, two years of which shall be a mandatory minimum term of imprisonment.

D. Any person who knowingly (i) reproduces by any means, including by computer, sells, gives away, distributes, electronically transmits, displays, purchases, or possesses with intent to sell, give away, distribute, transmit, or display child pornography or (ii) commands, entreats, or otherwise attempts to persuade another person to send, submit, transfer or provide to him any child pornography in order to gain entry into a group, association, or assembly of persons engaged in trading or sharing child pornography shall be punished by not less than five years nor more than 20 years in a state correctional facility. Any person who commits a second or subsequent violation under this subsection shall be punished by a term of imprisonment of not less than five years nor more than 20 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment. Any person who commits a violation of this subsection involving child pornography that he has produced as described in subsection B of § 18.2-374.1 shall be punished by not less than five years nor more than 20 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this subsection involving child pornography that he has produced as described in subsection B of § 18.2-374.1 shall be punished by not less than 10 years nor more than 20 years in a state correctional facility, 10 years of which shall be a mandatory minimum term of imprisonment.

E. A violation of this section involving child pornography that the accused has produced as defined in subsection B of § 18.2-374.1 constitutes a separate and distinct offense and shall not bar prosecution for an offense listed in § 18.2-374.1.

F. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

G. Any person who intentionally operates an Internet website for the purpose of facilitating the payment for access to child pornography is guilty of a Class 4 felony.

H. All child pornography shall be subject to lawful seizure and forfeiture pursuant to § 19.2-386.31.

I. For purposes of this section it may be inferred by text, title or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

J. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any child pornography is produced, reproduced, found, stored, received, or possessed in violation of this section.

K. The provisions of this section shall not apply to any such material that is possessed for a bona fide medical, scientific, governmental, law-enforcement, or judicial purpose by a physician, psychologist, scientist, attorney, employee of a law-enforcement agency, judge, or clerk who possesses such material in the course of conducting his professional duties as such.

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; therefore, Chapter 780 of the Acts of Assembly of 2016 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

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59 necessary appropriation cannot be determined for periods of commitment to the custody of the
60 Department of Juvenile Justice.