



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1560 (*Patron – Norment*)

LD#: 17104251

Date: 1/19/2017

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. Under the proposal, the statutory maximum penalty for possession of child pornography would be increased to 20 years imprisonment if the offender produced the pornography in his possession; this offense would also carry a two-year mandatory minimum term of imprisonment.

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. The proposal establishes a five-year mandatory minimum term of incarceration for the first offense and a ten-year mandatory minimum for a second or subsequent offense if the offender produced the pornography.

The proposal would also add a statement that a violation of § 18.2-374.1:1 involving child pornography that the accused has produced constitutes a separate and distinct offense and would not bar prosecution for an offense listed in § 18.2-374.1, relating to the production of child pornography.

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 instances in which the child pornography that was possessed, reproduced, etc., was also produced by the offender either in Virginia or outside the Commonwealth.

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 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 they 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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