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SENATE BILL NO. 168

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 29, 2018)

(Patrons Prior to Substitute—Senators Stanley and Surovell [SB 607])

A *BILL to amend the Code of Virginia by adding a section numbered 18.2-374.5, relating to electronic transmission of nude or partially nude images of minors by minors; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 18.2-374.5 as follows:

§ 18.2-374.5. *Electronic transmission of nude or partially nude images between minors; penalty.*

A. *As used in this section:*

"Device" means any cellular telephone, wireless telecommunications device, electronic communication device, as defined in § 18.2-190.1, or computer, as defined in § 18.2-152.2.

"Media" means any program generally used to share data or images.

B. Any minor who knowingly transmits, distributes, publishes, or disseminates any videographic or still image to another minor without the intent to harass, intimidate, or extort money or other pecuniary gain, by any means whatsoever on any device or through any media or through the use of a computer system, that depicts a minor who is totally nude or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breasts is guilty of a Class 1 misdemeanor.

C. Any minor who knowingly possesses at least one but not more than 10 videographic or still images that depicts a minor who is totally nude or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breasts, and such images are obtained with the consent of the depicted minor, is guilty of a Class 2 misdemeanor.

D. Whenever any person who has not previously been convicted or adjudicated delinquent of an offense under this section, or is not currently under a deferred proceeding as provided in this subsection, pleads guilty to or enters a plea of not guilty to a violation of this section, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused and the attorney for the Commonwealth, may defer proceedings and place him on probation upon terms and conditions as the court deems appropriate. Such term of probation shall be a minimum of six months and shall require a minimum of 50 hours of community service. Upon a violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

E. Venue for prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any image of a minor associated with a violation of this section is produced, reproduced, found, stored, or possessed.

F. The provisions of this section shall not preclude a prosecution under any other statute.