



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 607 (Patron – Surovell)

LD#: 18103542

Date: 12/21/2017

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 Direct Care:**  
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 child pornography, as defined by § 18.2-374.1, is a felony and the statutory maximum penalty ranges from 20 to 40 years depending on the offender's age and prior record, as well as the age of the child.

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**Analysis:**

According to the Sentencing Guidelines data for fiscal year (FY) 2012 through FY2017, five offenders under the age of 18 were convicted of a felony under §§ 18.2-374.1 or 18.2-374.1:1 during this time period. The felony violation of §§ 18.2-374.1 or 18.2-374.1:1 was the primary, or most serious, offense in four of the cases. Of these, two offenders did not receive an active term of incarceration to serve after sentencing. One received a local-responsible (jail) term of 12 months. The remaining offender was sentenced to a state-responsible (prison) term of 10.7 years. Data of juveniles adjudicated in the Juvenile and Domestic Relations District Court are not available.

Under the proposal, felony convictions for some juveniles under §§ 18.2-374.1 or 18.2-374.1:1 could be reduced to Class 2 misdemeanors.

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**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 direct care.** The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to have an impact on direct care (juvenile correctional center or alternative commitment placement) bed space needs.

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

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**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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