

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 18.2-374.1 and 18.2-374.1:1 of the Code of Virginia, relating to*
3 *possession, distribution, production, publication, sale, financing, etc., of child pornography; venue.*

4 [H 1330]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 18.2-374.1 and 18.2-374.1:1 of the Code of Virginia are amended and reenacted as**
8 **follows:**9 **§ 18.2-374.1. Production, publication, sale, financing, etc., of child pornography; presumption as**
10 **to age.**11 A. For purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, "child pornography"
12 means sexually explicit visual material which utilizes or has as a subject an identifiable minor. An
13 identifiable minor is a person who was a minor at the time the visual depiction was created, adapted, or
14 modified; or whose image as a minor was used in creating, adapting or modifying the visual depiction;
15 and who is recognizable as an actual person by the person's face, likeness, or other distinguishing
16 characteristic, such as a unique birthmark or other recognizable feature; and shall not be construed to
17 require proof of the actual identity of the identifiable minor.18 For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term "sexually
19 explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, digital
20 image, including such material stored in a computer's temporary Internet cache when three or more
21 images or streaming videos are present, or similar visual representation which depicts sexual bestiality, a
22 lewd exhibition of nudity, as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or
23 sadomasochistic abuse, as also defined in § 18.2-390, or a book, magazine or pamphlet which contains
24 such a visual representation. An undeveloped photograph or similar visual material may be sexually
25 explicit material notwithstanding that processing or other acts may be required to make its sexually
26 explicit content apparent.

27 B. A person shall be guilty of production of child pornography who:

28 1. Accosts, entices or solicits a person less than 18 years of age with intent to induce or force such
29 person to perform in or be a subject of child pornography; or

30 2. Produces or makes or attempts or prepares to produce or make child pornography; or

31 3. Who knowingly takes part in or participates in the filming, photographing, or other production of
32 child pornography by any means; or

33 4. Knowingly finances or attempts or prepares to finance child pornography.

34 5. [Repealed.]

35 B1. [Repealed.]

36 C1. Any person who violates this section, when the subject of the child pornography is a child less
37 than 15 years of age, shall be punished by not less than five years nor more than 30 years in a state
38 correctional facility. However, if the person is at least seven years older than the subject of the child
39 pornography the person shall be punished by a term of imprisonment of not less than five years nor
40 more than 30 years in a state correctional facility, five years of which shall be a mandatory minimum
41 term of imprisonment. Any person who commits a second or subsequent violation of this section where
42 the person is at least seven years older than the subject shall be punished by a term of imprisonment of
43 not less than 15 years nor more than 40 years, 15 years of which shall be a mandatory minimum term
44 of imprisonment.45 C2. Any person who violates this section, when the subject of the child pornography is a person at
46 least 15 but less than 18 years of age, shall be punished by not less than one year nor more than 20
47 years in a state correctional facility. However, if the person is at least seven years older than the subject
48 of the child pornography the person shall be punished by term of imprisonment of not less than three
49 years nor more than 30 years in a state correctional facility, three years of which shall be a mandatory
50 minimum term of imprisonment. Any person who commits a second or subsequent violation of this
51 section when he is at least seven years older than the subject shall be punished by a term of
52 imprisonment of not less than 10 years nor more than 30 years, 10 years of which shall be a mandatory
53 minimum term of imprisonment.54 C3. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be
55 served consecutively with any other sentence.

56 D. For the 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.

E. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs, *where the alleged offender resides*, or where any sexually explicit visual material associated with a violation of this section is produced, reproduced, found, stored, or possessed.

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

D. 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.

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

F. 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.

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

H. 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 the Department of Social Services or a local department of social services, employee of a law-enforcement agency, judge, or clerk and such person possesses such material in the course of conducting his professional duties as such.