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## HOUSE BILL NO. 1330

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on January 27, 2020)

(Patrons Prior to Substitute—Delegates Byron and Mullin [HB 478])

*A BILL to amend and reenact §§ 18.2-374.1 and 18.2-374.1:1 of the Code of Virginia, relating to possession, distribution, production, publication, sale, financing, etc., of child pornography; venue.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-374.1 and 18.2-374.1:1 of the Code of Virginia are amended and reenacted as follows:****§ 18.2-374.1. Production, publication, sale, financing, etc., of child pornography; presumption as to age.**

A. For purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, "child pornography" means sexually explicit visual material which utilizes or has as a subject an identifiable minor. An identifiable minor is a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and shall not be construed to require proof of the actual identity of the identifiable minor.

For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term "sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film, digital image, including such material stored in a computer's temporary Internet cache when three or more images or streaming videos are present, or similar visual representation which depicts sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent.

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

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

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

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

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

5. [Repealed.]

B1. [Repealed.]

C1. Any person who violates this section, when the subject of the child pornography is a child less than 15 years of age, shall be punished by not less than five years nor more than 30 years in a state correctional facility. However, if the person is at least seven years older than the subject of the child pornography the person shall be punished by a term of imprisonment of not less than five years nor more than 30 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 section where the person is at least seven years older than the subject shall be punished by a term of imprisonment of not less than 15 years nor more than 40 years, 15 years of which shall be a mandatory minimum term of imprisonment.

C2. Any person who violates this section, when the subject of the child pornography is a person at least 15 but less than 18 years of age, shall be punished by not less than one year nor more than 20 years in a state correctional facility. However, if the person is at least seven years older than the subject of the child pornography the person shall be punished by term of imprisonment of not less than three years nor more than 30 years in a state correctional facility, three years of which shall be a mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this section when he is at least seven years older than the subject shall be punished by a term of imprisonment of not less than 10 years nor more than 30 years, 10 years of which shall be a mandatory minimum term of imprisonment.

C3. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

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

60 material is less than 18 years of age.

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

64 **§ 18.2-374.1:1. Possession, reproduction, distribution, solicitation, and facilitation of child**  
65 **pornography; penalty.**

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

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

69 C. Any person who knowingly (i) reproduces by any means, including by computer, sells, gives  
70 away, distributes, electronically transmits, displays, purchases, or possesses with intent to sell, give  
71 away, distribute, transmit, or display child pornography or (ii) commands, entreats, or otherwise attempts  
72 to persuade another person to send, submit, transfer or provide to him any child pornography in order to  
73 gain entry into a group, association, or assembly of persons engaged in trading or sharing child  
74 pornography shall be punished by not less than five years nor more than 20 years in a state correctional  
75 facility. Any person who commits a second or subsequent violation under this subsection shall be  
76 punished by a term of imprisonment of not less than five years nor more than 20 years in a state  
77 correctional facility, five years of which shall be a mandatory minimum term of imprisonment. The  
78 mandatory minimum terms of imprisonment prescribed for violations of this section shall be served  
79 consecutively with any other sentence.

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

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

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

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

89 H. The provisions of this section shall not apply to any such material that is possessed for a bona  
90 fide medical, scientific, governmental, law-enforcement, or judicial purpose by a physician, psychologist,  
91 scientist, attorney, employee of the Department of Social Services or a local department of social  
92 services, employee of a law-enforcement agency, judge, or clerk and such person possesses such  
93 material in the course of conducting his professional duties as such.