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HOUSE BILL NO. 334

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 15.2-1627 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-386.3, relating to unlawful dissemination of sexually explicit visual material to another; penalty.

Patrons—Convirs-Fowler, Coyner, Clark, Jenkins, Kory, Maldonado, Price, Rasoul, Shin, Simon and Simonds; Senators: Boysko and McClellan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-1627 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-386.3 as follows:

§ 15.2-1627. Duties of attorneys for the Commonwealth and their assistants.

A. No attorney for the Commonwealth, or assistant attorney for the Commonwealth, shall be required to carry out any duties as a part of his office in civil matters of advising the governing body and all boards, departments, agencies, officials and employees of his county or city; of drafting or preparing county or city ordinances; of defending or bringing actions in which the county or city, or any of its boards, departments or agencies, or officials and employees thereof, shall be a party; or in any other manner of advising or representing the county or city, its boards, departments, agencies, officials and employees, except in matters involving the enforcement of the criminal law within the county or city.

B. The attorney for the Commonwealth and assistant attorney for the Commonwealth shall be a part of the department of law enforcement of the county or city in which he is elected or appointed, and shall have the duties and powers imposed upon him by general law, including the duty of prosecuting all warrants, indictments or informations charging a felony, and he may in his discretion, prosecute Class 1, 2 and 3 misdemeanors, or any other violation, the conviction of which carries a penalty of confinement in jail, or a fine of $500 or more, or both such confinement and fine. He shall enforce all forfeitures, and carry out all duties imposed upon him by § 2.2-3126. He may enforce the provisions of § 18.2-268.3, *18.2-386.3,* 29.1-738.2, 46.2-341.20:7, or 46.2-341.26:3. He may, in his discretion, file a notice of appeal with the circuit court for the appeal of a criminal case for which he was the prosecuting attorney and he may appear and represent the Commonwealth in any criminal case on appeal before the Court of Appeals or the Supreme Court for which he was the prosecuting attorney, provided that the Attorney General consented to such appearance pursuant to § 2.2-511.

He shall also represent the Commonwealth in an appeal of a civil matter related to the enforcement of a criminal law or a criminal case for which he was the prosecuting attorney, including a petition for expungement of a defendant's criminal record, an action of forfeiture filed in accordance with the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, or any matter which he may enforce pursuant to this section.

§ 18.2-386.3. Unlawful dissemination of sexually explicit visual material to another; penalty.

A. Any person 18 years of age or older who knowingly transmits sexually explicit visual material as defined in § 18.2-374.1 by computer or other electronic means to another person 18 years of age or older when such other person has not requested or consented to the transmittal of such material or has expressly forbidden the transmittal of such material is subject to a civil penalty of not more than $250 for a first offense and not more than $500 for a second offense or subsequent offense.

B. The provisions of this section shall not apply to any: (i) Internet service provider, mobile data provider, or operator of an online or mobile application, to the extent that such entity is transmitting, routing, or providing connections for electronic communications initiated by or at the direction of another; (ii) any service that transmits sexually explicit visual material, including an on-demand, subscription, or advertising-supported service; or (iii) a health care provider as defined in § 8.01-581.1 that transmits sexually explicit visual material for a legitimate medical purpose.

C. Venue for a prosecution under this section may lie in the jurisdiction where the sexually explicit visual material is transmitted from or where sexually explicit visual material is received or possessed by the recipient in violation of this section.

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