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SENATE BILL NO. 1204

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact § 18.2-372 of the Code of Virginia, relating to obscene; definition.

Patron—Reeves

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-372 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-372. "Obscene" defined.

A. As used in this section:

"Material" means a book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, videotape, script, image, instrument, statue, drawing, or other article.

"Patently offensive" means something is facially offensive as to affront current community standards of decency.

"Performance" means a play, motion picture film, videotape, dance, or other exhibition performed or shown before an audience.

"Sexual conduct" means physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

B. The word "obscene" where it appears in this article shall mean that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex; that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have means that as it relates to material or a performance:

1. The average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material or performance taken as a whole appeals to the prurient interest in sex;

2. The material or performance lacks serious literary, artistic, political, or scientific value;

3. The material or performance as used is not protected or privileged under the United States Constitution or the Constitution of Virginia; and

4. Such material or performance depicts or describes (i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality, or (ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state, or a device designed and marketed as useful primarily for stimulation of the human genital organs.

C. When determining if a material or performance is obscene, such material or performance shall be viewed in reference to the average adult except if it appears from the material or performance that the character of such material or performance is designed for or directed to children. If such material or performance is designed for or directed to children, then the material or performance shall be viewed in reference to the average child.

D. If any of the depictions or descriptions of sexual conduct listed in the definition of sexual conduct are declared by a court of competent jurisdiction to be unlawfully included in such definition, such declaration shall not invalidate this section as to other depictions or descriptions of sexual conduct.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

SB1204