

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: HB1276

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Webert

3. Committee: Courts of Justice

4. Title: Display of sexually explicit visual material to a child unlawful; penalty.

5. Summary: Currently, under § 18.2-374.4, it is a Class 6 felony for any person 18 years of age or older to display child pornography, or a grooming video or materials to a child under the age of 13 in the intent to entice, solicit, or encourage such child to engage in the fondling of the sexual or genital parts of another or the fondling of his sexual or genital parts by another, sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, or object sexual penetration. The proposal expands this provision to cover instances in which any person 18 years of age or older displays any type of sexually explicit visual material to a child under age 13.

6. Budget Amendment Necessary: Yes, Item 390.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: The Virginia Criminal Sentencing Commission (VCSC) reports that according to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2018 to FY2023, zero offenders were convicted under § 18.2-374.4 for displaying child pornography or grooming materials to a child under the age of 13 during the six-year period. The proposal expands the elements of this offense.

As there have been no recent convictions under current law, VCSC provided analysis for a similar Guidelines offense to help assess the potential sentencing patterns that may emerge if the proposal is enacted. Under § 18.2-370.1(A), it is a Class 6 felony for any person 18 years of age or older in a custodial role over a child to take indecent liberties with the child by proposing any type of sexual act with themselves or another person, exposing their genital parts to the child, or sexually abusing the child as defined in § 18.2-67.10(6). From FY2022 to FY2023, 125 individuals were convicted under § 18.2-370.1(A). In 66 of these cases, this offense was the primary, or most serious, offense in the sentencing event. Of these 66 sentencing events, 16 defendants (24.2%) received probation without an active term of incarceration, 15 defendants (22.7%) received a local-responsible (jail) sentence of 12 months or less, and 35 defendants (53%) received a state-responsible (prison) sentence of 1 year or more. For defendants given a prison term, the median prison sentence was 2.0 years.

For someone convicted of a Class 6 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$5.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$15.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g., correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 1, 2023 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, local and regional jails, Commonwealth Attorneys, Public defenders

10. Technical Amendment Necessary: No

11. Other Comments: None