



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 1276 (Patron – Webert)

LD#: 24100160

Date: 11/14/2023

Topic: Display of sexually explicit material to child

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000\*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Direct Care:**  
None (\$0)\*\*
- **Juvenile Detention Facilities:**  
None (\$0)\*\*

\*\* Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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#### Summary of Proposed Legislation:

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 would expand 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, not solely child pornography or a grooming video or materials.<sup>1</sup>

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#### Analysis:

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, analysis for a similar Guidelines offense provides some insight into 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

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<sup>1</sup> Under current law, the felony offense defined in § 18.2-374.4 is ineligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of this offense must serve a minimum of 85% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of this felony.

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.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it expands the applicability of an existing Class 6 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing data do not provide sufficient detail to estimate the number of offenders who would be affected by the proposal; therefore, the magnitude of the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** Similarly, the proposal may also increase local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be determined.

**Adult community corrections programs.** Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

**Virginia's Sentencing Guidelines.** Convictions under § 18.2-374.4 are not covered by the Sentencing Guidelines when the offense is the primary, or most serious, offense at sentencing. Such a conviction, however, could augment the Guidelines recommendation if the most serious offense at sentencing is covered by the Guidelines. The felony offense in § 18.2-374.4 is defined as violent in § 17.1-805(C) for the purposes of the Guidelines. No adjustment to the Guidelines is necessary under the proposal.

**Juvenile direct care.** The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to have an impact on direct care (juvenile correctional center or alternative commitment placement) bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal is not expected to impact the bed space needs of juvenile detention facilities.

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**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 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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