



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 731 (Patron – Durant)

LD#: 24105360

Date: 01/19/2024

Topic: Child pornography

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:**
Cannot be determined **
- **Juvenile Detention Facilities:**
Cannot be determined **

**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 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, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends § 18.2-374.1 of the *Code of Virginia* relating to production, publication, sale, financing, etc., of child pornography. Currently, under § 18.2-374.1(A), for purpose of Articles 4 and 5 of Chapter 8 (Crimes involving morals and decency), “child pornography” means sexually explicit visual material which utilizes or has as a subject an identifiable minor. The proposal expands the definition of “child pornography” to include material that has a depiction of a minor sufficiently realistic in nature such that a reasonable person would have reason to believe that the subject is an actual identifiable minor. The proposed expansion of the definition of child pornography will apply to all criminal offenses under Articles 4 and 5 of Chapter 8 that use or reference the term “child pornography.”

Pursuant to § 18.2-374.1, it is unlawful to produce, publish, sale, financing, etc., child pornography. Such offenses have varying levels of punishment based on certain elements, including the ages of the offender and victim and whether it is the offender’s second or subsequent offense. Maximum penalties for such offenses range from 20 to 40 years. Under § 18.2-374.1:1, it is unlawful to possess child pornography. Any person who possesses child pornography is guilty of a Class 6 felony. A second or subsequent violation is punishable as a Class 5 felony. Lastly, it is unlawful to reproduce, transmit, etc., child pornography under § 18.2-374.1:1(C,i). The offenses under § 18.2-374.1:1(C,i) are punishable by imprisonment of 5 to 20 years. A second or subsequent conviction under this subsection carries a mandatory minimum term of five years.¹

¹ Under current law, any person convicted of a felony offense under Article 4 or 5 of Chapter 8 of Title 18.2, except for a violation of §§ 18.2-362, 18.2-371.1(B), or 18.2-374.1:1(A), is ineligible for the enhanced sentence credits specified in § 53.1-202.3. Therefore, an individual convicted of any felony offenses involving child pornography (other than a first conviction for

Analysis:

According to fiscal year (FY) 2018 through FY2023 Sentencing Guidelines data, 159 offenders were convicted under § 18.2-374.1 for production, publication, sale, financing, etc., of child pornography. This offense was the primary, or most serious, offense in 114 cases. Of these, approximately 91.2% received a state-responsible (prison) term; the median prison sentence during this time period was 7.0 years. Another 5.3% received a local-responsible (jail) term with a median sentence of 4.5 months. The remaining 3.5% did not receive an active term of incarceration to serve after sentencing.

Sentencing Guidelines data for this six-year period indicate that 788 individuals were convicted of a felony under §§ 18.2-374.1:1(A), 18.2-374.1:1(B), or 18.2-374.1:1(C,i) for possession, reproduction, etc., of child pornography. This offense was the primary offense in 660 of the cases. Nearly three-quarters (73%) were sentenced to a prison term, with a median sentence length of 4.0 years. While 12% received a local jail term, with a median sentence of six months, the remaining 15% did not receive an active term of incarceration to serve after sentencing.

Existing databases do not contain sufficient detail to identify instances that would be affected by the proposal due to the expanded definition of child pornography.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the definition of child pornography, the proposal may result in additional felony convictions and, therefore, may increase future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. As a result, the magnitude of the impact on prison beds cannot be quantified.

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

Adult community corrections resources. 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 cannot be determined, the potential impact on community corrections resources cannot be estimated.

Virginia's Sentencing Guidelines. Violations involving the possession, reproduction, etc., of child pornography under § 18.2-374.1:1 are covered by the Sentencing Guidelines as the primary, or most serious, offense. Violations under § 18.2-374.1 for producing, publishing, selling, etc., child pornography also are covered by the Guidelines. Felonies involving child pornography are defined as violent under § 17.1-805(C) for the purposes of the Guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

possession of child pornography under § 18.2-374.1:1(A)) must serve a minimum of 85% of the sentence ordered by the court. Offenders convicted for a first possession offense under § 18.2-374.1:1(A) will serve a minimum of 67% of the sentence ordered by the court.

Pursuant to § 30-19.1:4, 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

childporn01_5360