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HOUSE BILL NO. 148

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice)

(Patrons Prior to Substitute—Delegates Williams, Walker [HB 274], and Zehr [HB 688])

A BILL to amend and reenact § 19.2-386.31 of the Code of Virginia, relating to seizure, forfeiture, and destruction of property used in connection with the exploitation and solicitation of children.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-386.31 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-386.31. Seizure, forfeiture, and destruction of property used in connection with the exploitation and solicitation of children.

12 A. All audio and visual equipment, electronic equipment, devices, and other personal property used in
13 connection with the possession, production, distribution, publication, sale, possession with intent to
14 distribute, or making of child pornography that constitutes a violation of § 18.2-374.1 or 18.2-374.1:1, or in
15 connection with the solicitation of a person less than 18 years of age that constitutes a violation of
16 § 18.2-374.3 shall be subject to lawful seizure by a law-enforcement officer and shall be subject to forfeiture
17 to the Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.). The Commonwealth shall file an
18 information and notice of seizure in accordance with the procedures in Chapter 22.1 (§ 19.2-386.1 et seq.).

B. If the forfeiture is established, the court shall order the destruction of all such equipment, devices, and other personal property, which order shall state (i) the existence and nature of such equipment, devices, and other personal property; (ii) the quantity thereof; (iii) the location seized; (iv) the person from whom such equipment, devices, and other personal property was seized, if known; and (v) the manner whereby such equipment, devices, and other personal property shall be destroyed. A return under oath, reporting the time, place, and manner of destruction shall be made to the court by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which such equipment, devices, and other personal property was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law-enforcement agency recovers, seizes, finds, is given, or otherwise comes into possession of any equipment, devices, or other personal property that are not evidence in a trial in the Commonwealth, the chief law-enforcement officer of the agency or his designee may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same, provided that a statement under oath, reporting a description of the equipment, devices, or other personal property destroyed and the time, place, and manner of destruction, is made to the chief law-enforcement officer by the officer to whom the order is directed.

33 whom the Order is directed.
34 C. No such equipment, devices, or other personal property used or intended to be used in a criminal
35 prosecution under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be disposed of as provided by this section
36 until all rights of appeal have been exhausted.

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37 D. Prior to any destruction under this section, the law-enforcement agency shall also notify the accused
38 or other interested party, if known, and his attorney at least seven days prior to the destruction of the time
39 and place the destruction will occur. Such notice shall be by first-class mail to the last known address of the
40 person required to be notified.