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HOUSE BILL NO. 629

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on _____)

(Patron Prior to Substitute—Delegate Callsen)

A BILL to amend and reenact §§ 18.2-59.1 and 18.2-386.1 of the Code of Virginia, relating to certain sex offenses; sexual extortion; unlawful creation of image of another; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-59.1 and 18.2-386.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-59.1. Sexual extortion; penalty.

A. Any person who maliciously threatens in writing, including an electronically transmitted communication producing a visual or electronic message, (i) to disseminate, sell, or publish a videographic or still image, created by any means whatsoever, or (ii) to not delete, remove, or take back a previously disseminated, sold, or published videographic or still image, created by any means whatsoever, (a) that depicts the complaining witness or such complaining witness's family or household member, as defined in § 16.1-228, as totally nude or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast or (b) in which the genitals, pubic area, buttocks, or female breast of such complaining witness or such complaining witness's family or household member is not exposed but such videographic or still image is obscene, as defined in § 18.2-372, with the intent to cause the complaining witness to engage in sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, inanimate or animate object sexual penetration, or an act of sexual abuse, as defined in § 18.2-67.10, and thereby engages in sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, inanimate or animate object sexual penetration, or an act of sexual abuse, as defined in § 18.2-67.10, is guilty of a Class 5 felony. However, any adult who violates this section with a person under the age of 18 is guilty of a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$100,000.

B. Any person who maliciously threatens eviction, loss of housing, property damage, or any financial loss with the intent to cause the complaining witness to engage in sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, inanimate or animate object sexual penetration, or an act of sexual abuse, as defined in § 18.2-67.10, and thereby engages in sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, inanimate or animate object sexual penetration, or an act of sexual abuse, as defined in § 18.2-67.10, is guilty of a Class 5 felony. However, any adult who violates this section with a person under the age of 15 is guilty of a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$100,000.

C. Any person who maliciously threatens a complaining witness in violation of subsection A or B, but such complaining witness does not thereby engage in sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, inanimate or animate object sexual penetration, or an act of sexual abuse, as defined in § 18.2-67.10, is guilty of attempted sexual extortion and shall be punished as prescribed in § 18.2-26.

D. A prosecution pursuant to this section may be in the county, city, or town in which the communication was either made or received.

§ 18.2-386.1. Unlawful creation of image of another; penalty.

A. It shall be unlawful for any person to knowingly and intentionally create any videographic or still image by any means whatsoever of any nonconsenting person if (i) that person is (a) totally nude; (b) clad in undergarments; or (c) in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast; or (d) not exposed to show the genitals, pubic area, buttocks, or female breast but such videographic or still image is obscene, as defined in § 18.2-372, when such nonconsenting person is in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom, or other location; or (ii) the videographic or still image is created by placing the lens or image-gathering component of the recording device in a position directly beneath or between a person's legs for the purpose of capturing an image of the person's intimate parts or undergarments covering those intimate parts when the intimate parts or undergarments would not otherwise be visible to the general public; and when the circumstances set forth in clause (i) or (ii) are otherwise such that the person being recorded would have a reasonable expectation of privacy.

B. The provisions of this section shall not apply to any videographic or still image created by any means whatsoever by (i) law-enforcement officers pursuant to a criminal investigation which is otherwise lawful or (ii) correctional officials and local or regional jail officials for security purposes or for investigations of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail, or to any sound recording of an oral conversation made as a result of any videotaping or filming pursuant to Chapter 6 (§ 19.2-61 et seq.) of Title 19.2.

C. A violation of subsection A shall be punishable as is a Class 1 misdemeanor.

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60 D. A violation of subsection A involving a nonconsenting person ~~under the age of~~ *younger than 18 shall*
61 ~~be punishable as years of age~~ is a Class 6 felony.

62 E. Where it is alleged in the warrant, information, or indictment on which the person is convicted and
63 found by the court or jury trying the case that the person has previously been convicted within the 10-year
64 period immediately preceding the offense charged of two or more of the offenses specified in this section,
65 each such offense occurring on a different date, and when such offenses were not part of a common act,
66 transaction, or scheme, and such person has been at liberty as defined in § 53.1-151 between each conviction,
67 he ~~shall be~~ is guilty of a Class 6 felony.

68 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
69 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
70 **appropriation is _____ for periods of imprisonment in state adult correctional facilities; therefore,**
71 **Chapter 725 of the Acts of Assembly of 2025 requires the Virginia Criminal Sentencing Commission to**
72 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the**
73 **estimated amount of the necessary appropriation is _____ for periods of commitment to the custody**
74 **of the Department of Juvenile Justice.**