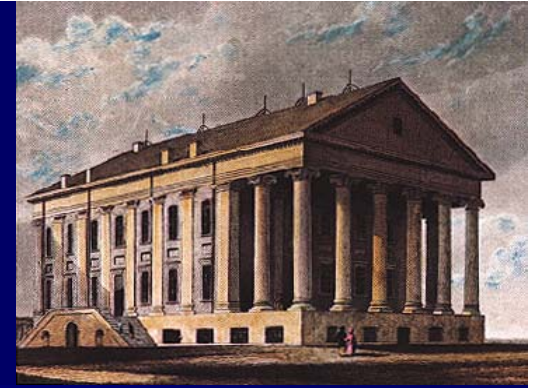


# Virginia State Crime Commission

“Sexting”

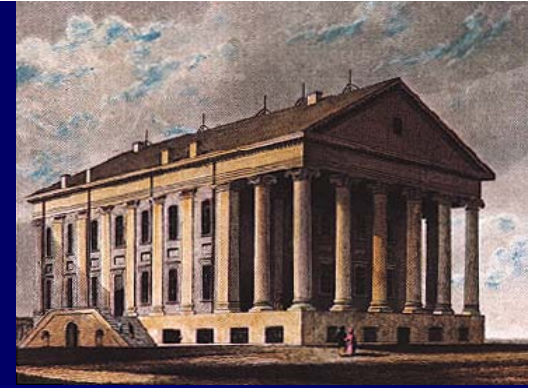
September 16, 2009

# Overview



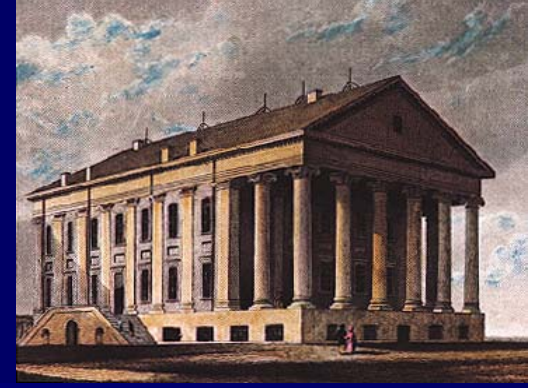
- Study Authorization
- Background
- Criminal Penalties under Virginia Law
- Registration Requirements under Virginia Law
- Registration Requirements under the Adam Walsh Act
- General Policy Options

# Study Authorization



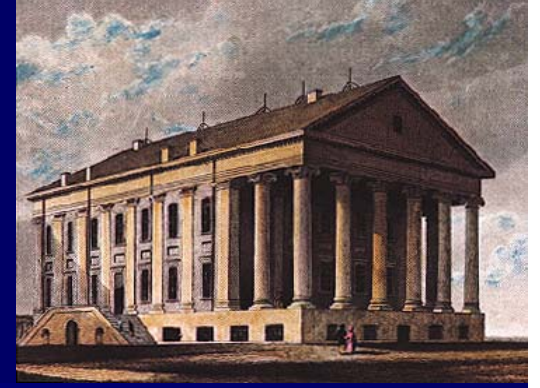
- The Crime Commission was requested by the Joint Commission on Technology and Science to assist in a review of “sexting,” specifically, how current law applies and how it is being prosecuted.
- Approved by the Executive Committee.

# Background



- Sexting, derived from the word “texting,” is the act of taking a sexually suggestive photo, usually of oneself, and then sending it via a picture message from one cell phone to another.
- Sexting has attracted attention nationwide, as many of the participants taking and receiving such photos are minors.

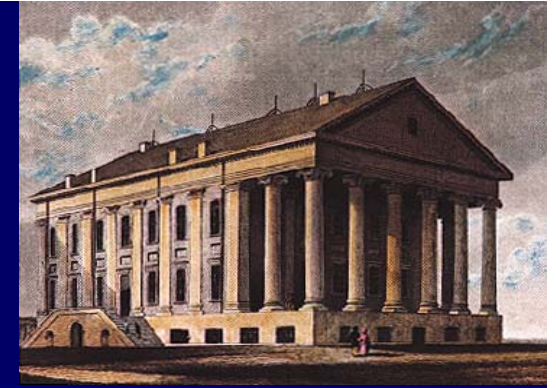
# Background



- 22 % of teenage girls, and 18 % of teenage boys, have sent or posted images or video showing themselves nude or semi-nude.
  - 11 % of young teenage girls, between the ages of 13 and 16, have done so.

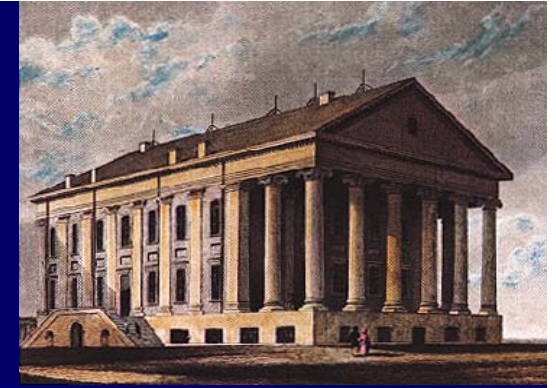
Source: “Sex and Tech,” *a report issued by the National Campaign to Prevent Teen and Unplanned Pregnancy, based on an online survey conducted from September 25 to October 3, 2008.*

# Background



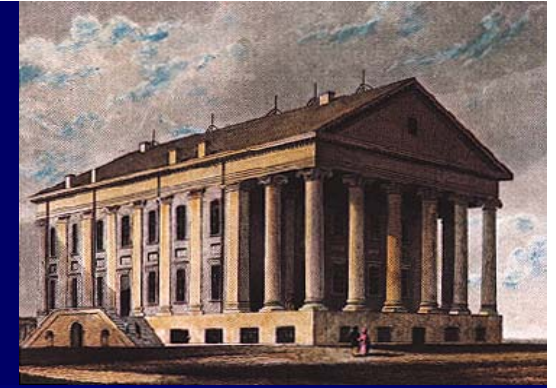
- Sexting has raised debates across the country:
  - Are child pornography laws, which were meant to criminalize the predatory behavior of older men, appropriate for the prosecution of teenagers who have engaged in sexting voluntarily?
  - What are the best ways to curtail this activity amongst teenagers?

# Criminal Penalties



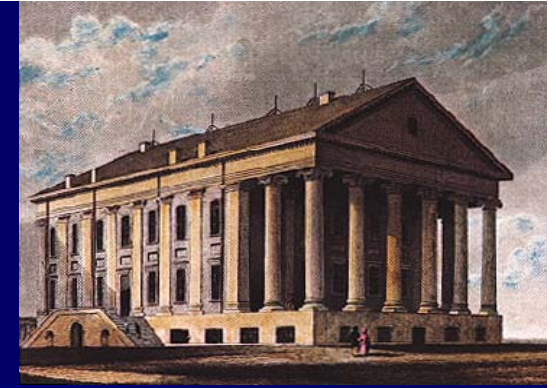
- Sexting may violate a number of Virginia's criminal statutes.
- Va. Code § 18.2-374.1 criminalizes the production and distribution of child pornography.
- If a minor takes a photo of himself, it is a violation of subsection (B)(2).
- If the minor is under the age of 15, it is an unclassified felony carrying from 5 to 30 years.
- If the minor is 15 or older, it is an unclassified felony carrying from 1 to 20 years.
- It should be noted that unless the minor was tried as an adult, he almost certainly would not receive such a lengthy sentence.

# Criminal Penalties



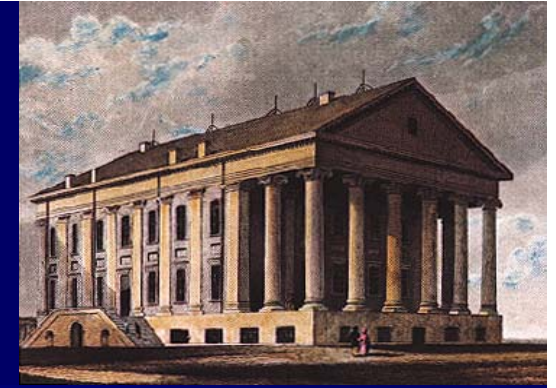
- Va. Code § 374.1:1 criminalizes the possession of any such photos that are sent, making it a Class 6 felony for a first violation, and a Class 5 felony for a second violation.
- If the recipient of the photos then digitally passes them on to a friend, or even just displays them on his phone to another, his act of distribution or display is an unclassified felony carrying from 5 to 20 years.
- A second act of distribution or display also carries from 5 to 20 years, with a mandatory minimum punishment of 5 years.
- Unless the minor is tried as an adult, he also would probably not receive such a lengthy sentence.

# Criminal Penalties



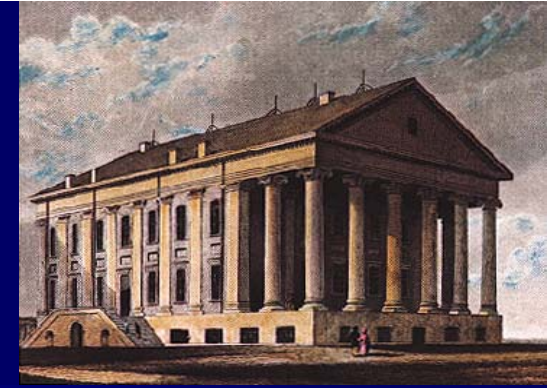
- Under Virginia law, actual nudity is not required for the images to be child pornography.
- Under the relevant definitions provided by Va. Code § 18.2-390, “nudity” includes “a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple....”
- The nudity must involve a lewd exhibition; not all naked pictures of children qualify as child pornography. Asa v. Commonwealth, 17 Va. App. 714 (1994).

# Criminal Penalties



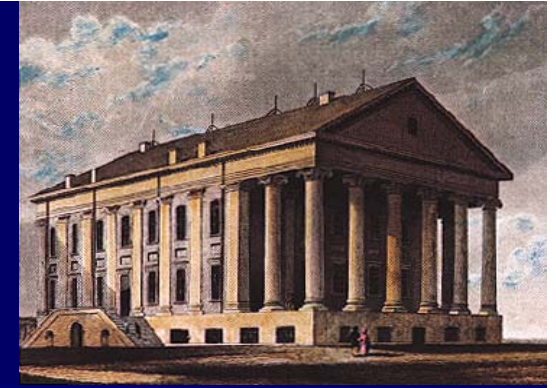
- A minor can also break the law if he solicits his girlfriend to give him a nude photo of herself.
- A solicitation to a minor to be the subject of child pornography is a violation of Va. Code § 18.2-374.1(B), and carries the same penalties as the actual production of child pornography.
- Additionally, if the minor communicates his solicitation by e-mail, phone, cell phone, or other communications system, it is a violation of Va. Code § 18.2-374.3(B), which is a Class 6 felony.

# Registration Requirements



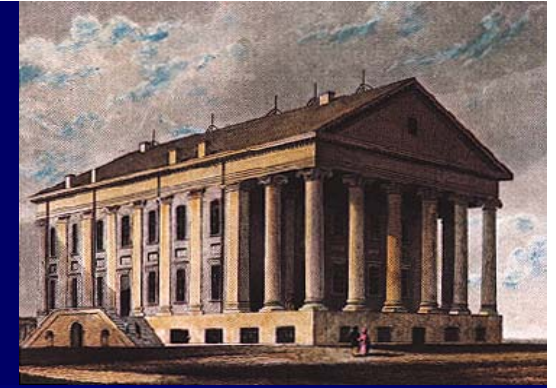
- Under current Virginia law, juveniles are subject to the registration requirements of sex offenders if:
  - They are tried as adults; or
  - They are over the age of 13 at the time of the offense, and
  - The Commonwealth’s Attorney makes a motion for the juvenile to be registered as a sex offender, and
  - The court finds there are sufficient aggravating factors to require registration.
- Juveniles who are adjudicated delinquent of a sexual offense are not automatically required to be registered.

# Registration Requirements under the Adam Walsh Act



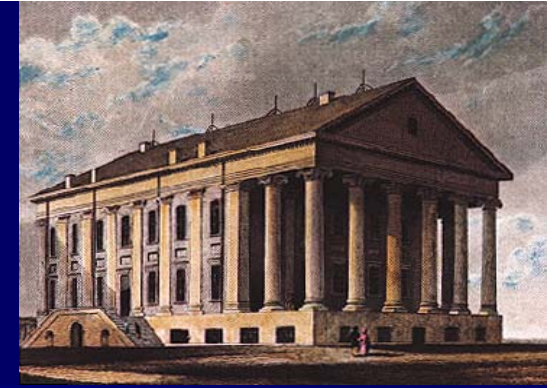
- Title I of the federal Adam Walsh Act requires states to create sex offender registries.
- It contains many specific requirements as to which offenses require registration, and how long offenders must be on the registry.
- Juveniles who are convicted as adults of producing or distributing child pornography must register as sex offenders for at least 25 years.
- Virginia's registration requirements for these offenses comply with the Act.
- Under Virginia's registration laws, producers of child pornography must register for life as having committed a sexually violent offense.
- Distributors of child pornography must register for either life, or for at least 25 years.

# Registration Requirements under the Adam Walsh Act



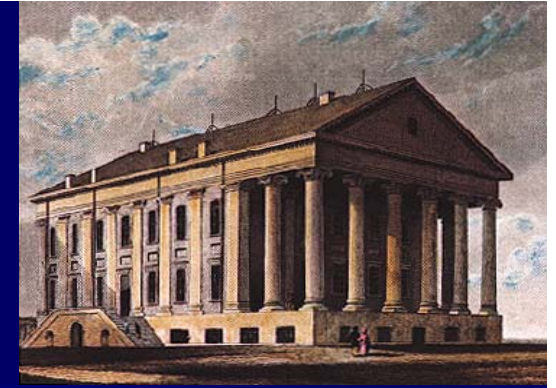
- Under the Adam Walsh Act, juveniles convicted as adults of possession of child pornography must register as sex offenders for at least 15 years.
- Virginia's registration requirement for this offense complies with the Act, for offenses that occurred on or after July 1, 2006.
- Because Virginia does not require registration for this offense if the crime occurred before July 1, 2006, Virginia does not fully meet the requirements of the Act for this offense.

# Registration Requirements under Adam Walsh



- Under the Adam Walsh Act, juveniles who are adjudicated delinquent of a sex offense are only required to register if:
  - They are 14 years old or older at the time of the offense; and,
  - The offense was comparable to or more severe than “aggravated sexual abuse,” which is defined in relevant part as engaging in a sexual act that involves actual touching.
- Thus, the Adam Walsh Act does not require that juveniles who engage in sexting be placed on a sex offender registry.

# General Policy Options



- Maintain the status quo, with no change in Virginia's criminal laws; or
- Create a new offense to specifically deal with sexting by juveniles.
- Request the Virginia Department of Education work to educate students on the dangers and illegality of sexting.

# Discussion