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SENATE BILL NO. 176

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 5, 2000)

(Patron Prior to Substitute—Senator Howell)

A BILL to amend and reenact §§ 18.2-67.5:2 and 18.2-370 of the Code of Virginia, relating to punishment upon conviction of certain criminal sexual acts; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-67.5:2 and 18.2-370 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-67.5:2. Punishment upon conviction of certain subsequent felony sexual assault.

A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the offenses specified in subsection B of this section and one of the offenses specified in subsection B of § 18.2-67.5:3., when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury or judge before whom the person is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to felony convictions for:

1. Carnal knowledge of a child between thirteen and fifteen years of age in violation of § 18.2-63 when the offense is committed by a person over the age of eighteen;
2. Carnal knowledge of certain minors in violation of § 18.2-64.1;
3. Aggravated sexual battery in violation of § 18.2-67.3;
4. Crimes against nature in violation of subsection B of § 18.2-361;
5. Adultery or fornication with one's own child or grandchild in violation of § 18.2-366;
6. Taking indecent liberties with a child in violation of § 18.2-370 or § 18.2-370.1; or
7. Conspiracy to commit any offense listed in subdivisions 1 through 6 pursuant to § 18.2-22.

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if committed by an adult in the Commonwealth and the offense was committed less than twenty years before the second offense.

The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

§ 18.2-370. Taking indecent liberties with children.

A. Any person eighteen years of age or over, who, with lascivious intent, shall knowingly and intentionally:

(1) Expose his or her sexual or genital parts to any child under the age of fourteen years to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or

(2) [Repealed.]

(3) Propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or

(4) Propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or

(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this section; or

(6) Receive money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of eighteen years to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of sexually explicit material; shall be guilty of a Class 6 felony.

B. Any person who is convicted of a second or subsequent violation of this section shall be guilty of a Class 5 felony; provided, that (i) the offenses were not part of a common act, transaction or scheme, (ii) the accused was at liberty as defined in § 53.1-151 between each conviction, and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation

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