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## SENATE BILL NO. 176

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 2, 2000)

(Patron Prior to Substitute—Senator Howell)

*A BILL to amend and reenact §§ 18.2-67.3, 18.2-67.5:2, 18.2-67.5:3 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 §§ 18.2-67.3, 18.2-67.5:2, 18.2-67.5:3 and 18.2-370 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-67.3. Aggravated sexual battery.

A. An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and

1. The complaining witness is less than thirteen years of age, or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation, or through the use of the complaining witness's mental incapacity or physical helplessness, and

a. The complaining witness is at least thirteen but less than fifteen years of age, or

b. The accused causes serious bodily or mental injury to the complaining witness, or

c. The accused uses or threatens to use a dangerous weapon.

B. Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than twenty years and by a fine of not more than \$100,000. *A second or subsequent conviction under this section shall be punished in accordance with § 18.2-67.5:3, if two or more of the convictions are for offenses that occurred on or after the accused's eighteenth birthday.*

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

A. Any person convicted of more than one offense specified in subsection B, 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; or

8. Any of the offenses set out in subsection B of § 18.2-67.5:3.

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.

§ 18.2-67.5:3. Punishment upon conviction of certain subsequent violent felony sexual assault.

A. Any person convicted of more than one offense specified in subsection B, 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 life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he 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 convictions for:

1. Rape in violation of § 18.2-61;

2. Forcible sodomy in violation of § 18.2-67.1;  
3. Object sexual penetration in violation of § 18.2-67.2;  
4. Abduction with intent to defile in violation of § 18.2-48; or  
*4a. Aggravated sexual battery in violation of § 18.2-67.3; or*

5. Conspiracy to commit any offense listed in subdivisions 1 through 4a 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 alleged and proved to have committed a second or subsequent violation of this section shall be guilty of a Class 5 felony.

**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 is \$276,900 in FY 2010.**