



## Impact Analysis on Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### **House Bill No. 1999**

*(Patron – Bell)*

**Date Submitted:** 12/23/02

**LD #:** 03-0616627

**Topic:** Spousal exception for certain sexual crimes

#### **Proposed Change:**

This proposal amends §§ 18.2-67.1 and 18.2-67.2 to remove the requirement that married persons must be living apart or that the defendant caused bodily injury by use of force for a spouse to be convicted of forcible sodomy or object sexual penetration. There is currently an exception in each statute whereby a spouse cannot be found guilty of forcible sodomy or object sexual penetration of a marital partner unless the spouses were living separate and apart or the defendant caused bodily injury by the use of force or violence. The 2002 General Assembly amended § 18.2-61 to remove this exception clause for rape of a spouse. The proposal also repeals § 18.2-67.2:1 concerning marital sexual assault.

In addition, the proposed changes to §§ 18.2-61, 18.2-67.1, and 18.2-67.2 concerning marital rape, forcible sodomy, and object sexual penetration of a spouse would criminalize these acts when committed on spouses through their mental incapacity or physical helplessness.

The proposal specifies that upon a finding of guilt in non-jury trials that involve §§ 18.2-61, 18.2-67.1, and 18.2-67.2, the court may suspend all or part of a defendant's sentence upon completion of counseling. This removes the court's current statutory option of dismissing the proceedings upon completion of counseling.

The proposed legislation amends *Code* sections relating to preliminary hearings and the sex offender registry (§§ 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 17.1-275.7, 17.1-805, 19.2-298.1, 19.2-298.2, 19.2-298.3, 19.2-299, 19.2-303.4, 19.2-335, and 19.2-336) to reflect the changes described above.

#### **Current Practice:**

According to fiscal year (FY) 2000 and FY2001 Pre-/Post-Sentence Investigation (PSI) data, there were three cases involving forcible sodomy of a spouse under § 18.2-67.1. All three cases involved spouses who were not living together at the time of the assault, and all three involved some form of bodily injury. One offender received no active incarceration period and the remaining two received an average state-responsible prison term of ten years. During FY2000 and FY2001, there were no convictions under § 18.2-67.2 involving object sexual penetration of a spouse.

There were 16 cases of marital sexual assault under § 18.2-67.2:1 between FY2000 and FY2001. The current law pertaining to marital sexual assault carries a 20-year statutory maximum and includes the acts of rape, sodomy, and object sexual penetration. Less than half (44%) of offenders convicted for marital sexual assault received a state-responsible (prison) term; those that did received a sentence of 2.5 years, on average. One-fourth of the defendants convicted of marital sexual assault were living together with their spouse at the time of the offense, and over half (57%) did not inflict bodily injury on the victim during the assault. Under the proposal, these cases could be prosecuted as rape, forcible sodomy or object sexual penetration under §§ 18.2-61, 18.2-67.1, and 18.2-67.2, which carry a maximum penalty of life.

Between FY2000 and FY2001, none of the cases involving spousal sexual assault were adjudicated by a jury. The majority of cases (76%) were resolved through guilty pleas and the remaining cases (24%) were resolved through bench trials.

Convictions under §§ 18.2-61, 18.2-67.1, 18.2-67.2, and 18.2-67.2:1 are covered by the sentencing guidelines.

#### Background Sentencing Information

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Forcible rape of spouse (§ 18.2-61)	2	50%	0%	50%	60 months
Forcible sodomy of spouse (§ 18.2-67.1)	3	33%	0%	67%	120 months
Marital sexual assault (§ 18.2-67.2:1)	16	31%	25%	44%	30 months

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database

#### Impact of Proposed Legislation:

The proposed amendment to §§ 18.2-67.1 and 18.2-67.2 eliminates criteria that the victim must sustain bodily injury and that the offender and victim must be living apart for there to be a conviction for forcible sodomy or object sexual penetration of a spouse. According to recent data, most of the marital sexual assault cases involved spouses who lived apart, rather than together. However, over half of the marital sexual assault cases did not involve bodily injury; rather, they involved emotional or threatened injury of the victim. Therefore, an amendment to the *Code* to allow charging in forcible sodomy and object sexual penetration cases involving no bodily injury to the spouse may result in a greater number of convictions and, potentially, prison beds.

The proposed legislation would criminalize marital rape, forcible sodomy of a spouse, and object sexual penetration of a spouse via the mental incapacity or physical helplessness of the spouse. Current data do not provide sufficient detail of the mental and physical states of victims involved in spousal sexual assault cases. Therefore, the impact of this amendment cannot be determined.

The proposal also specifies that upon a finding of guilt in non-jury trials that involve §§ 18.2-61, 18.2-67.1, and 18.2-67.2, the court may suspend all or part of a defendant's sentence upon completion of counseling, removing the court's current statutory option of dismissing the proceedings upon completion of counseling. Using current data systems, it is not possible to determine the number of cases involving defendants who successfully complete therapy in exchange for dismissal of all charges; therefore, it is not possible to estimate the number of additional convictions that could result from the exclusion of this option.

No adjustment to the sentencing guidelines would be necessary under the proposal.

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**