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**HOUSE BILL NO. 514**

Offered January 14, 2004

Prefiled January 13, 2004

*A BILL to amend and reenact § 18.2-67.10 of the Code of Virginia, relating to the definition of mental incapacity and physical helplessness for purposes of criminal sexual assault; penalty.*

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 Patrons—Marrs and Albo
 

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 Referred to Committee for Courts of Justice
 

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**Be it enacted by the General Assembly of Virginia:****1. That § 18.2-67.10 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-67.10. General definitions.

As used in this article:

1. "Complaining witness" means the person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, marital sexual assault, aggravated sexual battery, or sexual battery.

2. "Intimate parts" means the genitalia, anus, groin, breast, or buttocks of any person.

3. "Mental incapacity" means that condition of the complaining witness (a) existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known, or (b) existing at the time of the offense as a result of the administration to the complaining witness, with the knowledge of the accused but without the knowledge of the complaining witness, of any drug or controlled substance that had the effect of impairing the judgment, self-control, actions or consciousness of the complaining witness and that prevented the complaining witness from understanding the nature or consequences of the sexual act.

4. "Physical helplessness" means (a) unconsciousness or any other condition existing at the time of an offense under this article which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known, or (b) unconsciousness or any other condition existing at the time of the offense as a result of the administration to the complaining witness, with the knowledge of the accused but without the knowledge of the complaining witness, of any drug or controlled substance that had the effect of impairing the judgment, self-control, actions or consciousness of the complaining witness and that rendered the complaining witness physically unable to communicate an unwillingness to act.

5. The complaining witness's "prior sexual conduct" means any sexual conduct on the part of the complaining witness which took place before the conclusion of the trial, excluding the conduct involved in the offense alleged under this article.

6. "Sexual abuse" means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;

b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or

c. The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. 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.**

INTRODUCED

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