



## Impact Analysis on Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 514

(Patron – Marrs)

Date Submitted: 12/17/03

LD #: 04-7549388

Topic: Definition of mental incapacity and physical helplessness in sexual assault cases

#### Proposed Change:

The proposal amends § 18.2-67.10 to revise the definitions of “mental incapacity” and “physical helplessness” with respect to victims of criminal sexual assault. The proposal adds language to include conditions caused by the administration of any drug or controlled substance to the victim. Currently, the definitions of “mental incapacity” and “physical helplessness” do not include conditions caused by drugging the victim.

#### Data Analysis:

According to Virginia’s Incident Based Reporting System (IBR) for calendar year (CY) 2000, there were 8 reported crimes in Virginia involving sexual assault in which drugs, narcotics, or sleeping pills were used by the offender as a means of coercion. Seven of the sexual assaults involved forcible rape, and one involved sexual assault with an object.

Additional data are available regarding forcible rape under the current definition of mental incapacity and physical helplessness. According to FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, there were 11 cases involving forcible rape of a victim through the victim’s mental incapacity or physical helplessness. The majority of the offenders convicted (82%) were sentenced to a state-responsible sentence with the median incarceration length being 8 years.

#### Background Sentencing Information

| Sexual Assault  | Number of Cases | % No Incarceration | % Local Responsible | % State Responsible | Median State Responsible Sentence |
|---|-----------------|--------------------|---------------------|---------------------|-----------------------------------|
| Forcible rape of victim through the victim’s mental incapacity or physical helplessness | 11              | 9%                 | 9%                  | 82%                 | 8 yrs.                            |

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

The PSI database from FY2000 and FY2001 does not include information about whether drugs were administered to victims as a means of coercion in sexual assault cases. Information is available, however, about the offender’s use of drugs and alcohol at the time of the offense.

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

During FY2000 and FY2001, there were 1,530 sexual assault cases for which a PSI report is available. According to PSI data during this time period, 19% of offenders were under the influence of alcohol, 3% were under the influence of drugs, and 6% were under the influence of both alcohol and drugs at the time of the offense.

Convictions for sexual assault offenses such as forcible rape, forcible sodomy, object sexual penetration, marital sexual assault, and aggravated sexual battery are covered by the sentencing guidelines as the primary offense. These offenses also augment the guidelines recommendation whether they are listed as additional offenses.

**Impact of Proposed Legislation:**

The proposed legislation expands the definitions of mental incapacity and physical helplessness to include instances in which the victim has been administered a drug or controlled substance. Although information is available in the Commonwealth pertaining to the number of reported sexual assaults in which a victim was drugged, data are not available regarding indictment, conviction and sentencing in those specific cases. The proposed legislation may have an impact on the bed space needs of the Commonwealth. However, the databases available to the Commission are insufficient to provide information on the number of incidences that may be affected by the proposed legislation.

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.**

helpless01\_7549