



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

#### **House Bill No. 655**

*(Patron – Bell)*

**Date Submitted:** 12/30/03

**LD #:** 04-6481232

**Topic:** Sex crimes against spouses

#### **Proposed Change:**

This proposal amends §§ 9.1-902, 9.1-908, 9.1-910, 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 17.1-805, 18.2-61, 18.2-67.1, 18.2-67.2, , 19.2-299, 19.2-303.4, 19.2-335 and 19.2-336, and repeals §§ 18.2-67.2:1, 19.2-218.1 and 19.2-218.2 to eliminate the spousal exception in forcible sodomy and object sexual penetration statutes and to eliminate provisions that allow for deferral of disposition, counseling and ultimate dismissal of charges in spousal cases. The proposal removes language that, under existing *Code*, states that marital forcible sodomy or marital object sexual penetration cannot be prosecuted under § 18.2-67.1 or § 18.2-67.2 unless the spouses were living apart or there was bodily injury caused by force or violence. Consequently, the statute that defines the crime of marital sexual assault becomes unnecessary and is repealed under the proposal. Numerous other sections of the *Code* are revised to accommodate the substantive changes to Title 18.2.

Prior to fiscal year (FY) 2003, the crimes of rape, forcible sodomy and object sexual penetration when committed by the spouse of the victim, residing in the same home and without causing injury could be charged under marital sexual assault (§ 18.2-67.2:1). Beginning in FY2003, the exception made for a spouse committing rape was removed from § 18.2-61, but remained in the statutes for forcible sodomy (§ 18.2-67.1) and object sexual penetration (§ 18.2-67.2).

#### **Data Analysis:**

According to FY2003 Local Inmate Data System (LIDS) data, which contains information on persons held pre- or post-trial in local jail, 12 offenders were convicted under the current crime of marital sexual assault. Approximately 42% received a state-responsible (prison) term, with a median sentence of 2.5 years (see the *Background Sentencing Information* below).

By removing the “spousal exception” and the crime of marital sexual assault, as proposed, these offenses could be prosecuted as either forcible sodomy or object sexual penetration. Nearly all offenders convicted of forcible sodomy or object sexual penetration, according to the FY2000 and FY2001 PSI database, are sentenced to prison. The median prison sentence (after suspended time) for forcible sodomy is 7.5 years; the median prison sentence (after suspended time) for object sexual penetration is 7 years.

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**Background Sentencing Information**

Selected Sexual Assault Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State Responsible Sentence
Marital sexual assault*	12	8%	50%	42%	2.5 yrs.
Forcible sodomy by force, threat, intimidation**	37	5%	3%	92%	69.4 yrs.
Object sexual penetration by force, threat, intimidation**	40	5%	0%	95%	30.2 yrs.

Data Source: \*FY2003 Local Inmate Data System (LIDS) database

\*\* FY2000 and FY2001 PSI database

**Impact of Proposed Legislation:**

The proposed legislation may increase state-responsible (prison) bed space needs. The proposal has the effect of increasing the penalty for forcible sodomy and object sexual penetration involving a spouse from 1 to 20 years (penalty for marital sexual assault under § 18.2-67.2:1) to a range of 5 years to life in prison. Increasing the statutory maximum from 20 years to life will not have an impact within the six-year window required by § 30-19.1:4 for fiscal impact analyses. Increasing the statutory minimum penalty from one to five years may result in an increased need for state-responsible (prison) beds. This impact is difficult to assess because judges may suspend time from the statutory minimum specified in *Code* for nearly all crimes, but a jury must impose the statutory minimum and may not suspend any portion of the sentence (although a judge in Virginia is permitted by law to suspend all or a portion of a sentence imposed by a jury, judges let the jury sentence stand in about 75% of the trials with a jury).

To calculate the minimum potential impact of this proposal, the analysis focused on sentencing in jury cases; sentences were increased to the proposed statutory minimum for the proportion of cases sentenced by a jury (and judicial adjustment of jury sentences was taken into account). Eliminating the provisions that allow for deferral of disposition, counseling and dismissal of charges in spousal cases tried without a jury is unlikely to result in additional prison beds because judges may suspend the all of the sentence imposed for this offense. The net high impact on state-responsible bed space needs is approximately seven beds by June 2010.

The bed space requirements for local-responsible (jail) inmates may also be affected. It is expected that there will be a decreased need of less than one bed statewide by June 2010, for a savings to the state of \$4,639 (using FY2002 jail inmate costs) for reimbursement to localities. There would also be a savings for the localities of \$3,157 for the same partial bed.

Sentencing guidelines would be affected by the proposal. Should the crime of marital sexual assault be removed from the *Code*, the Virginia Criminal Sentencing Commission will need to revise the guidelines to reflect this change.

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**Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY05	FY06	FY07	FY08	FY09	FY10
0	1	3	4	6	7

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$162,923 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.**

**Assumptions underlying the analysis include:****General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2003.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in August 2003.
3. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$20.29 per day or \$7,410 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation on criminal provisions, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. The bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002; for sexual assault offenses the rate was 9.81%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%.
3. Increased statutory minimums may impact bed space through jury sentencing. Sentences were adjusted to reflect the dynamics of jury sentencing using information from the Sentencing Guideline (SG) database. Sentences were increased to the statutory minimum for the proportion of cases that were sentenced by a jury in violent sex offenses (rape, forcible sodomy, and object sexual penetration). For the proportion of cases where the judge suspended some of the jury-imposed time, the jury sentence was reduced by the ratio of (imposed minus suspended time)/imposed time. If the actual sentence already exceeded the proposed statutory minimum penalty, the case was presumed to have no impact.

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