



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 660

(Patron – Bell)

Date Submitted: 12/16/03

LD #: 04-7552232

Topic: Aggravated sexual battery through the victim's mental incapacity or physical helplessness

Proposed Change:

The proposed legislation amends § 18.2-67.3 to define *any* sexual abuse accomplished through the victim's mental incapacity or physical helplessness as aggravated sexual battery. Under existing *Code*, sexual abuse of a victim who is mentally incapacitated or physically helpless is not defined as aggravated sexual battery unless the act is committed against a child who is 13 or 14 years of age, the act causes serious bodily or mental injury, or the offender used or threatened to use a dangerous weapon. The proposal removes the additional criteria found in current *Code* for victims who are mentally incapacitated or physically helpless. The proposal does not change or modify the punishment level specified by this statute (1 to 20 years). Sexual abuse that does not meet the conditions of aggravated sexual battery is punished as a Class 1 misdemeanor under § 18.2-67.4(A,i).

Data Analysis:

According to the fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database, there were 126 convictions for aggravated sexual battery of a victim 13 years of age or older in violation of § 18.2-67.3. The majority, (61%) were sentenced to a state-responsible (prison) term, 20% received a local-responsible (jail) sentence. The remaining 19% did not receive an active term of incarceration.

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, 408 offenders held pre- or post-trial were convicted of misdemeanor sexual battery. Of these, the majority (91%) were sentenced to local-responsible (jail) terms with a median sentence of 5.3 months. Four percent of these offenders received probation and the remaining 5%, convicted of additional charges, received state-responsible (prison) terms with a median sentence of three years. The data are not sufficiently detailed to determine if any victims in these cases were mentally incapacitated or physically helpless at the time of the offense.

Impact of Proposed Legislation:

Because the proposed legislation expands the definition of aggravated sexual battery, the proposal may have an impact on the state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission are insufficient to provide information on the number of new

convictions for aggravated sexual battery that may result under the proposed legislation. No adjustment to the 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.

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